A DIGEST OF INDIAN LAW CASES

CONTAINING

HIGH COURT REPORTS

AND

PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA, 1913,

WITH AN INDEX OF CASES,

BEING A SUPPLEMENT TO THE CONSOLIDATED DIGEST OF INDIAN LAW CASES, 1836—1909.

COMPILED UNDER THE ORDERS OF THE GOVERNMENT OF INDIA

BY

B. D. BOSE

OF THE INNER TEMPLE, BARRISTER-AT-LAW; ADVOCATE OF THE HIGH COURT, CALCUTTA, AND EDITOR OF THE INDIAN LAW REPORTS, CALCUTTA SERIES

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PREFACE.

THIS volume is published as a supplement to the new Consolidated Digest, 1836 1909 It contains the cases published in the four series of the Indian Law Reports, the Law Reports, Indian Appeals and the Calcutta Weekly Notes, for the year 1913

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For easy reference, several words and phrases, which are expounded in the judgments digested in this volume, are given in a separate list, in alphabetical order, under the heading "Words and Phrases"

B D Bose

HIGH COURT CALCUTTA
The 10th July 1914.

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ANNUAL DIGEST

OF

THE HIGH COURT REPORTS

AND OF

THE PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA,

1913.

A

ABANDONMENT

See LANDLORD AND TENANT **I L R 40 Calc 870**

See TRADE MARK **I L R 40 Calc. 814**

ABATEMENT OF RENT

See MINING LEASE **L R 40 I A 223**

ABKARI ACT (BOM V OF 1878)

———— ss 16, 43—*License under the Act to sell country liquor—Prohibition to sell transfer or sub let the licensee s right—Partnership not prohibited* Defendant 1 obtained a license under the Abkari Act (Bom Act V of 1878) to sell country liquor One of the conditions of the license was that the licensee shall not sell, transfer to another person or sub let his right to sell country liquor obtained under the license and he shall enter into no *kabu liyat* for the exercise of the said right which, in the opinion of the Collector, is of the nature of a sub lease By the preamble of the license the licensee was given subject to the conditions expressed subsequently, an exclusive right to sell country liquor in the shop for one year from the 1st April 1904 After obtaining the license the defendants admitted the (deceased) plaintiff as a partner in the business and the latter brought a suit for an account of what was due upon the partnership A question having arisen as to whether the contract for partnership was forbidden

into the business only pointed to the inference

ABKARI ACT (BOM V OF 1878)—*contd*

———— s 16—*contd*

that the Abkari authorities had decided not to prohibit the taking up of other persons into part nership in the profits derived from the selling of liquor under an Abkari license KARSAN *v* GATLU SHIVAJI (1912) **I L R 37 Bom 320**

———— ss 32, 67—*License to sell country liquor —Collector suspending and cancelling the license—Suit against Government by licensee for damages—Filing of the suit after the allowed period—Collector s action done bona fide—Liability to be sued—Acts done in performance of statutory duties* The plaint iff was granted a license to sell country liquor for the year beginning with the 1st April 1910, on his executing an agreement under s 31 of the Abkari Act (Bombay Act V of 1878) on the 14th March 1910 The Collector informed the plaintiff on the 31st March 1910, that his license was suspended, and on the 6th of April following he intimated to the plaintiff that the license was

ment, but in each case was unsuccessful On the 30th March 1911 the plaintiff filed the present suit against Government to recover damages consequent upon the cancellation of his license The lower Court dismissed the suit as barred by the provisions of s 67 of the Bombay Abkari Act (Bombay Act V of 1878) first, because the Collector has acted *bona fide* in pursuance of the Act, and secondly because the suit was not instituted within four months from the date of the Act complained of On appeal *Held*, that the Act complained of being the Collector s Act of revoking the plaintiff s license on the 31st March 1910, the suit was instituted beyond the time limit prescribed by s 67 of the Abkari

ABKARI ACT (BOM. V OF 1878)—*concld.*

——— s. 32—*contd.*

Act (Bombay Abkari Act V of 1878). *Held*, further, that section 67 barred the suit, inasmuch as the Collector had done the act *bonâ fide* and in pursuance of the statute. *Per Curiam*: If any public or private body charged with the execution of a statute honestly intends to put the law in motion and really and not unreasonably believes in the existence of facts, which, if existent, would justify his acting and acts accordingly, his conduct will be in pursuance of the statute and will be protected. *Hermann* v. *Seneschal*, *32 L. J. C. P. 43*, and *Spooner* v. *Juddow*, *4 Moo. I. A. 353*, followed. DHONDU DAODU *v.* SECRETARY OF STATE FOR INDIA (1912).

I. L. R. 37 Bom. 101

——— s. 43.

See WADHWAN CIVIL STATION.

I. L. R. 37 Bom. 152

ABWAB.

——— *Illegal cess— Rent—Bengal Tenancy Act (VIII of 1885), s. 74—Regulation VIII of 1793, ss. 54 and 55—Contract.* If, upon a fair interpretation of the terms of the contract, the sum claimed can be deemed part of the actual rent, the tenant is bound to pay it; if, on the other hand, the sum claimed can only be regarded as an imposition in addition to the actual rent, the stipulation for its payment is void. Under a lease of certain lands the yearly rent was specified as assessed at a certain rate, and at the end of the lease, in a clause entirely distinct from the one wherein the rent was assessed, a provision was made for the delivery of husk, which was not expressly or by implication made part of the rent. The plaintiffs brought a suit for arrears of rent on the basis of this lease, claiming a deduction of a certain sum of money for unculturable lands, and seeking to recover arrears of rent besides husk. They further claimed cesses upon the amount stated to be rent, and not upon the amount claimed as price of the husk: *Held*, that the sum claimed as the value of the husk did not form part of the consolidated rent, but was an independent item falling within the description of an imposition in addition to the actual rent. *Sonnum Sookul* v. *Shaikh Elahee Buksh*, *7 W.R. 453*, *Raj Narain Mitra* v. *Panna Chand Singh*, *7 C. W. N. 203*, *Gayratulla Sardar* v. *Girish Chandra Bhaumick*, *12 C. W. N. 175*, *Krishna Chandra Sen* v. *Susila Soondary Dassee*, *I.L.R. 26 Calc. 611*, *Sreekanta Prasad* v. *Irshad Ali Sircar*, *16 C. L. J. 225*, approved. *Radha Charan Ray Chaudhury* v. *Golak Chandra Ghose*, *I. L. R. 31 Calc. 834*, distinguished. *Tilukhdari Singh* v. *Chulhan Mahton*, *I.L.R. 17 Calc. 131*, *Radha Prasad Singh* v. *Bal Kowar Koeri*, *I.L.R. 17 Calc. 726*, referred to. MATHURA PRASAD *v.* TOTA SINGH (1912) . . **I. L. R. 40 Calc. 806**

ACCOUNT.

See PARTNERSHIP **I. L. R. 37 Bom. 158**

ACCOUNT—*concld.*

——— suit for—

See COMMON MANAGER.

I. L. R. 40 Calc. 150

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), s. 15 B.

I. L. R. 37 Bom. 614

——— *Principal and Agent—Proprietor appointed by the co-proprietors as Common Manager for payment of joint debts, whether an agent of the latter and of the heirs of a deceased proprietor—Limitation—Limitation Act (IX of 1908), Sch. I, Art. 89—Plea of Limitation under the Act taken on remand after previous unsuccessful plea of limitation under Act VIII of 1869, s. 30.* A proprietor appointed by the other co-proprietors of an estate as common manager thereof, for the purpose of realizing its profits and appropriating them to the payment of their joint debt, is an agent of the other proprietors and of the legal representatives of a proprietor since deceased within Art. 89 of the Limitation Act (IX of 1908), and the period of limitation of a suit for accounts brought by the latter against such manager is governed thereby. Where repeated demands for accounts were alleged in the plaint to have been made, but the dates were not mentioned nor proved, and the demands appeared to have continued to the termination of the agency, it was *held* that limitation commenced to run from the date of the termination of the agency. A plea of limitation under the Limitation Act may be raised on the hearing after the remand of a case by the High Court notwithstanding the failure of a similar plea taken only under s. 30 of Act VIII 1869 on the first hearing in the Court below. CHANDRA MADHAB BARUA *v.* NOBIN CHANDRA BARUA (1912).

I. L. R. 40 Calc. 108

ACCRETION.

——— *Island formed in the mouth of a river subsequently becoming joined to the mainland, ownership of.* Where an island is formed in the mouth of a river, which subsequently becomes part of the mainland through the drying up of the intervening channel, the increase being perceptible or sudden, the land which formed the island is not an accretion to the mainland but merely an "adjunction" and the owner of the mainland obtains no proprietary rights therein as against Government. SURIYA RAO BAHADUR *v.* THE SECRETARY OF STATE FOR INDIA (1913) . . . . **I. L. R. 36 Mad. 57**

ACCUSED.

——— statement by—

See DEFAMATION **I. L. R. 40 Calc. 433**

ACKNOWLEDGMENT.

See LIMITATION ACT (XV OF 1877), s. 19 AND SCH. II, ART. 148.

I. L. R. 35 All. 227

ACKNOWLEDGMENT—*concld*

See LIMITATION ACT (IX OF 1908) s 19
I L R 35 All 437

See REGISTRATION ACT (III OF 1877) s 17 (*n*)
I L R 35 All 202

See STAMP ACT (II OF 1899) ss 2 (23) 62 AND 63
I L R 35 All 290

ACQUIESCENCE

See ADVERSE POSSESSION
I L R 40 Calc 173

See HINDU LAW—ALIENATION
I L R 40 Calc 966

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——— **1859—XI**

See REVENUE SALE LAW

See SALE FOR ARREARS OF REVENUE

——— **1859—XIII**

See WORKMEN S BREACH OF CONTRACT ACT

——— **1859—XIV**

See LIMITATION ACT 1859

——— **1860—XLV**

See PENAL CODE

——— **1861—V**

See POLICE ACT

——— **1863—XX**

See RELIGIOUS ENDOWMENTS ACT

——— **1864—II**

See ADEN COURTS ACT

——— **1865—III**

See CARRIERS ACT

——— **1865—X**

See SUCCESSION ACT

——— **1869—IV**

See DIVORCE ACT

——— **1870—VII**

See COURT FEES ACT

——— **1870—XXI.**

See HINDU WILLS ACT

ACT—*contd*

——— **1871—IX**

See LIMITATION ACT 1871

——— **1871—XXIII**

See PENSIONS ACT

——— **1872—I**

See EVIDENCE ACT

——— **1872—IX.**

See CONTRACT ACT

——— **1873—X**

See OATHS ACT

——— **1874—III**

See MARRIED WOMEN S PROPERTY ACT

——— **1875—IX**

See MAJORITY ACT

——— **1877—I**

See SPECIFIC RELIEF ACT

——— **1877—III**

See REGISTRATION ACT

——— **1877—XV**

See LIMITATION ACT 1877

——— **1878—XI**

See ARMS ACT

——— **1879—XVIII**

See LEGAL PRACTITIONERS ACT

——— **1881—V**

See PROBATE AND ADMINISTRATION ACT

——— **1881—XVIII**

See CENTRAL PROVINCES LAND REVENUE ACT

——— **1882—II**

See TRUSTS ACT

——— **1882—IV**

See TRANSFER OF PROPERTY ACT

——— **1882—V**

See EASEMENTS ACT

——— **1882—VI**

See COMPANIES ACT

——— **1882—XIV**

See CIVIL PROCEDURE CODE 1882

——— **1885—VIII**

See BENGAL TENANCY ACT

——— **1885—XVII**

See CENTRAL PROVINCES GOVERNMENT WARDS ACT

ACT—*contd.*

———— **1886—II.**

See Income-Tax Act.

———— **1887—VII.**

See Suits' Valuation Act.

———— **1887—IX.**

See Provincial Small Cause Courts Act.

———— **1887—XII.**

See Civil Courts Act.

———— **1887—XVII.**

See Punjab Land Revenue Act.

———— **1889—IV.**

See Merchandise Marks Act.

———— **1889—VII.**

See Succession Certificate Act.

———— **1890—VIII.**

See Guardians and Wards Act.

———— **1890—IX.**

See Railways Act.

———— **1890—XI.**

See Prevention of Cruelty to Animals Act.

———— **1893—IV.**

See Partition Act.

———— **1894—I.**

See Land Acquisition Act.

———— **1897—X.**

See General Clauses Act.

———— **1898—V.**

See Criminal Procedure Code.

———— **1898—XI.**

See Central Provinces Tenancy Act.

———— **1899—II.**

See Stamp Act.

———— **1899—VIII.**

See Petroleum Act.

———— **1899—IX.**

See Arbitration Act.

———— **1899—XI.**

See Court-fees Amendment Act.

———— **1900—II.**

See Transfer of Property Amendment Act.

ACT—*concld.*

———— **1907—III.**

See Provincial Insolvency Act.

———— **1908—V.**

See Civil Procedure Code, 1908.

———— **1908—IX.**

See Limitation Act.

———— **1908—XVI.**

See Registration Act, 1908.

———— **1909—III.**

See Presidency Towns Insolvency Act.

———— **1910—I.**

See Press Act.

———— **1912—V.**

See Provident Insurance Societies Act.

———— **1912 VI.**

See Life Assurance Companies Act.

ACTIONABLE CLAIM.

See Transfer of Property Act (IV of 1882 as amended by Act II of 1900), s. 130 **I. L. R. 37 Bom. 198**

ADEN COURTS ACT (II OF 1864).

———— s. 3.

See Divorce Act (IV of 1869)), s. 3 (2). **I. L. R. 37 Bom. 57**

ADEN POLITICAL RESIDENT.

See Divorce Act (IV of 1869), s. 3 (2). **I. L. R. 37 Bom. 57**

ADJUDICATION.

See Provincial Insolvency Act. **I. L. R. 36 Mad. 402**

ADJUDICATION ORDER.

———— effect of—

See Insolvency . **I. L. R. 40 Calc. 78**

ADMINISTRATION.

———— *Court-fees—Inventory—Proceedings to amend Valuation—Limitation—Probate and Administration Act (V of 1881), s. 98—Court-fees Amendment Act (XI of 1899), s. 19 H, sub-s. (4).* The six months within which the Collector may move under the Court-fees Amendment Act, s. 19 H, to obtain an amended valuation of an estate in respect of which letters of administration have been granted, runs from the date of the exhibition of an inventory to satisfy the Probate and Administration Act, 1881, s. 98, and from the date when the District Judge holds that a sufficient inventory has been exhibited. Documents filed in another suit can

ADMINISTRATION—*concld.*

not be taken in conjunction with lists exhibited by an administratrix for the purpose of constituting a sufficient inventory RAMESHWAR KUMAR v COLLECTOR OF GAYA (1913)
I. R. 40 I. A. 236

ADMINISTRATORS.

———— **disagreement between**—

See LETTERS OF ADMINISTRATION
I. L. R. 40 Calc 50

ADOPTED SON.

See HINDU LAW—ALIENATION
I L R. 40 Calc. 966

See PARTIES—RELIGIOUS ENDOWMENT
I. L R 40 Calc. 323

ADOPTION.

See HINDU LAW **I. L R. 37 Bom. 598**

See HINDU LAW—ADOPTION

See HINDU LAW—ADOPTION
I L. R. 37 Bom 107

See HINDU LAW—ADOPTION
I L. R. 37 Bom. 951

See LIMITATION ACT (IX OF 1908), SCH I, ART 118
I L. R. 37 Bom. 513

See NAIKINS . **I. L. R. 37 Bom. 116**

——— ——— *Agarwal Banias of Zira, Punjab—Custom—Adopted person, an orphan and married—Adoption by declaration of adoption and subsequent treatment of adoptee as adopted son—Privy Council, practice of—Concurrent decisions on fact* In this case in which the plaintiff sued for a declaration of his adoption, the parties were Agarwal Banias of Zira in the Punjab and the plaintiff being an orphan and married, the validity of the adoption if made, depended upon whether they were governed by custom or by the Hindu law Their Lordships of the Judicial Committee considered that the Courts below had concurrently found that among the class to which the parties belonged the rules of Hindu Law as to adoption did not apply, and that by the custom applicable to that class an unequivocal declaration by the adopting father that a boy had been adopted and the subsequent treatment of that boy as the adopted son, was sufficient to constitute a valid adoption, and that, in fact, the defendant had so adopted the plaintiff and treated him as his adopted son In accordance, therefore, with the usual practice as to such concurrent decisions *Held*, that the adoption had been established Owing, however, to the limited nature of the evidence as to custom among the Agarwal Banias of Zira, the effect of the decision should be confined to the particular circumstances of the case CHIMAN LAL v HARI CHAND (1913) . **I. L R. 40 Calc 879**

ADVERSE POSSESSION.

See GUJARAT TALUKDARS' ACT (BOM ACT VI OF 1888), s 31
I. L. R. 37 Bom. 380

ADVERSE POSSESSION—*contd*

See HEREDITARY OFFICES ACT (BOM. ACT III OF 1874), ss 11, 11A.
I. L R. 37 Bom. 37

See LIMITATION
I. L. R 37 Bom. 224, 231

See LIMITATION ACT (XV OF 1877), SCH. II, ARTS 127, 142
I. L. R. 37 Bom. 84

and grantee—Homestead land—Sale by the Collector under the Public Demands Recovery Act (XI of 1859)—Sale certificate—Title of auction purchaser—Limitation Act (IX of 1908), s 2 (8) Sch I, Art. 144—Transfer of Property Act (IV of 1882), s 43—Evidence Act (I of 1872), s 115 At an execution sale under the Public Demands Recovery Act, the right, title and interest in a certain homestead land forming part of a *ghatwali* tenure was sold in 1878 by the Collector In the sale certificate granted to the auction-purchaser the land was described as rent free, and, as a matter of fact, no rent was ever paid to the *ghatwal* or anybody by the judgment-debtor, or after him, by the auction purchaser. In 1888 the plaintiff, and infant of 4 years of age, succeeded as *ghatwal* on the relinquishment of the office by his father Thereafter, by an agreement between the young *ghatwal* the Maharajah of Burdwan, who was the superior zemindar, and the Government, the young *ghatwal* relinquished the office on condition that the property should be treated as resumed by the State to be settled permanently with the Maharajah, by whom it would be granted in *mokarari* to the retiring *ghatwal* This arrangement was carried out and in 1895 the plaintiff obtained the *mokarari* settlement from the Maharajah In 1902 the plaintiff attained majority, and in 1904 he brought a suit to eject the representatives of the auction purchaser from the homestead land and to recover possession of the same *Held*, that mere non payment of rent or discontinuance of payment of rent did not by itself constitute adverse possession *Madan Mohan Gossain* v *Kumar Rameswar Malia, 7 C L J 615, Troyluckha Tarinee Dossia* v *Mohima Chunder Muttuck, 7 W R 400, Rungo Lall Mundal* v *Abdool Guffor, I L R 4 Calc*

Act must be applied, and the plaintiff as *ghatwal* did not claim through his father as his predecessor within the meaning of section 2 of the Limitation Act *Ram Chander Singh* v *Madho Kumari, I L R 12 Calc 484, L R 12 I A 188*, referred to *Held*, further, that the plaintiff, when he succeeded as *ghatwal*, was an infant, and as he commenced the present suit within three years from the attainment of majority, the plea of limitation could not be sustained *Held*

ADVERSE POSSESSION—*concld.*

further, that no title by estoppel accrued in favour of the purchase at the certificate sale. There was no estoppel in this case as against the decree-holder, and the appellants, as representatives of the purchaser at the certificate sale, could not avail themselves of any possible estoppel against the Secretary of State or against the plaintiff as grantee from him through the Maharajah of Burdwan. *Held*, further, that even if there had been any estoppel available against the Secretary of State, there could have been none against the plaintiff; none was created by reason of what happened in 1888, because the estate did not then vest in the Crown to be granted afresh to the plaintiff, nor was any created by reason of what happened in 1895, because the so-called after-acquired title of the Secretary of State was acquired by him on condition that a clear title would be granted to the Maharajah of Burdwan as zemindar and to the plaintiff as *mokararidar* under him. The doctrine of estoppel does not apply where an after-acquired title is taken by the grantor under a conveyance made to him as a conduit and for the purpose of vesting the title in a third person. PRASANNA KUMAR MOOKERJEE *v.* SRIKANTHA ROUT (1912).

I. L. R. 40 Calc. 173

2. ——— *Hypothecation—Stranger in adverse possession for 12 years as against mortgagor—Effect of, on mortgagee's rights—Payments of interest and acknowledgment by mortgagor, effect of.* Adverse possession by a stranger for more than 12 years of a property, which is subject to a hypothecation not only extinguishes the rights of the mortgagor but bars also those of the mortgagee, though the rights of the mortgagee may have been kept alive by payments or acknowledgments made by the mortgagor. *Prannath Roy Chowdry* v. *Rookea Begum, 7 Moo. I. A. 323, 355, Karan Singh* v. *Bakar Ali Khan, I. L. R. 5 All. 1, Ammu* v. *Ramakrishna Sastri, I. L. R. 2 Mad. 226, 229, Ram Coomar Sein* v. *Prossunno Coomar Sein, 1. W. R. 375,* and *Sheoumber Sahoo* v. *Bhowanee deen Kulwar, 2 N. W. P. H. C. 223,* followed. *Aimadar Mandal* v. *Makhan Lal Day, I. L. R. 33 Calc. 1015,* and *Second Appeal No. 682 of 1909* (unreported), not followed. *Heath* v. *Pugh, L. R. 6 Q. B. D. 345,* and *on appeal Pugh* v *Heath, L. R. 7 A. C. 235,* distinguished. *Per* CURIAM: The rights of the mortgagee would be extinguished in such a case even where he is not entitled to possession under the mortgage, as the mortgagee is not without remedy against the trespasser and could protect his interests by proper proceedings. A mortgage is merely a security for the debt and a mortgagee's right is to sell the interest of the mortgagor in the land and a mortgage decree under which the land is attempted to be sold cannot bind persons who do not derive their title from the mortgagor and were not parties to the suit in which the mortgage decree was passed but claim a statutory title adversely to the mortgagor. RAMASWAMI CHETTI *v.* PONNA PADAYACHI (1913).

I. L. R. 36 Mad. 97

AGARWAL BANIAS OF ZIRA.

See ADOPTION . I. L. R. 40 Calc. 879

AGENT.

See ACCOUNT, SUIT FOR.

I. L. R. 40 Calc. 108

AGGREGATE OF SENTENCES.

See APPEAL . I. L. R. 40 Calc. 631

See CRIMINAL PROCEDURE CODE, ss. 35, 408 . . I. L. R. 35 All. 154

AGRA TENANCY ACT (II OF 1901).

——— s. 4, Ch. X—"*Land*"—*Resumption of rent-free grants—Grove-land—Suit for resumption of grove-land not maintainable in Revenue Court. Held*, that grove-land not being "land held for agricultural purposes" within the meaning of s. 4 (2) of the Agra Tenancy Act, 1901, nor, "land" within the meaning of Chapter X of the Act, no suit will lie in a Revenue Court for resumption of rent-free grant of grove-land. *Sheomangal* v. *Sardar Singh, 6 A. L. J. 749,* and *Megh Singh* v. *Nasar Fatima, Select decisions of 1911, No. 4,* referred to. HADI HASAN KHAN *v.* PATI RAM (1913) . . I. L. R. 35 All. 200

——— ss. 11, et seq.—*Occupancy holding—Mahant—Mahant capable of acquiring occupancy rights for the benefit of the math which he represents. Held*, that the Mahant of a *math*, just as much as any other tenant who holds for his own personal benefit, can acquire occupancy rights under the provisions of the Agra Tenancy Act, 1901, for the benefit of the *math* which he represents. PARMANAND SINGH *v.* MAHANT RAMANAND GIR.

I. L. R. 35 All. 474

——— s. 20—*Occupancy holding—Mortgage—Sub-mortgage by mortgagee of occupancy holding —Rights of sub-mortgagees.* Where the usufructuary mortgagee of an occupancy holding purported to sub-mortgage his mortgagee rights: *Held*, that the sub-mortgagees were entitled to a money decree against their sub-mortgagor for the money advanced by them. BALGOBIND BHAGAT *v.* NAGINA MISIR (1913) . I. L. R. 35 All. 405

——— ss. 28, 29, 30, 34—*Exproprietary tenant—Mortgagee from exproprietary tenant holding over after ejectment of mortgagor—Rent not fixed by agreement or by a decree of the Court—Right of zamindar to recover rent. G* and *H* were Zamindars who owned some *sir* land and an occupancy holding. They executed a usufructuary mortgage of their *sir* land and occupancy holding in favour of *K* and the predecessor of *J*. In execution of a money decree against *G* and *H* their zamindari rights were sold and *P* purchased the same. Subsequently, in execution of a decree for arrears of rent, *P* got *G* and *H* ejected by the Revenue Court. Later on *P* got *K* and *J* the mortgagees also ejected by the Revenue Court. *P* then brought a suit against *K* and *J* for arrears of rent for the period between the ejectment of *G* and *H* and their own ejectment. *Held* that *P*

AGRA TENANCY ACT (II OF 1901)— *contd*

——— s 28—*concld*

was not entitled to recover the rent in regard to the period of time between the two ejectments as the rent had not been fixed either by agreement between the parties or by a decree of Court KAMTA PRASAD v PANNA LAL (1912) I L R 35 All 123

——— s 34—*Defendant in possession of land without consent of owner—Ejectment of defendant through Revenue Court—Subsequent suit for rent—Cause of action—Misjoinder of causes of action—Civil Procedure Code 1908 Order II, rule 2* On a partition of certain revenue paying property some land which fell to the plaintiff's share remained in possession of the defendant who refused to vacate it The plaintiff sued the defendant for ejectment in the Revenue Court The defendant pleaded that he was an ex proprietary tenant but the Court held him to be a non occupancy tenant and ejected him The plaintiff then brought the present suit under s 34 of the Agra Tenancy Act, 1901 for rent of the land held by the defendant during *the period prior to his ejectment as land occupied* by the defendant without the plaintiff's consent *Held* that the defendant being in occupation of the land without the consent of the plaintiff was liable to pay rent therefor under s 34

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further that the suit was not barred by reason of the plaintiff having in his previous suit for ejectment treated the defendant as a tenant *Held* also that the plaintiff's cause of action under s 34 of the Agra Tenancy Act was no part of his cause of action to recover possession of the property, and could not be joined in the previous suit *and the present suit was therefore not barred* by the provisions of the Code of Civil Procedure O II, r 2 NANDAN SINGH v GANGA PRASAD (1913) I L R 35 All 512

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ejectment under s 58 of the Agra Tenancy Act 1901, the defendants pleaded that they were not tenants but mortgagees of the proprietary *rights of which the plaintiff was alleged to be* the purchaser of the equity of redemption *Held* that this amounted to a distinct claiming of a proprietary title or at least of a portion of the bundle of rights which go to make up a proprietary title and the appeal would lie to the District Judge KALYAN MAL v SAMAND (1913) I L R 35 All 157

——— ss 79, 95—*Jurisdiction—Landholder and tenant—Occupancy holding—Suit for declaration that plaintiff is heir of deceased occupancy tenant and for possession of holding—Practice—Useless declaration refused* The son of a deceased

AGRA TENANCY ACT (II OF 1901)— *concld.*

——— s 79—*concld*

occupancy tenant filed a suit against the zamindar in the civil Court (i) to have it declared that he was the son and lawful heir of the late tenant and (ii) for possession of the occupancy holding held by him The plaintiff had been ejected more than two years before suit *Held* that although so far as the first relief claimed was concerned the suit might be cognizable by a Civil Court so far as the second relief was concerned the plaintiff's *remedy was by suit under s 79 of the Agra* Tenancy Act and inasmuch as the time for filing such a suit had long since expired there was no object to be gained by granting the first relief The entire suit was accordingly dismissed *Dori Lal* v *Sardar Singh 5 All L J 514*, referred to *BIRHAM KHUSHAL v SUMERA (1913)* I L R 35 All, 299

——— s 95—*Civil and Revenue Courts—Jurisdiction—Dispute between two rival claimants to a tenancy* *Held* that the question of title to a tenancy arising between rival claimants to that tenancy is a question which is cognizable by a Civil Court and is not a matter coming within the purview of s 95 of the Agra Tenancy Act 1901 *Bhup* v *Ram Lal I L R 33 All 795* followed *Zubeda Bibi* v *Sheo Charan I L R 32 All 83* and *Hamid Ali Shah* v *Wilayat Ali I L R 22 All 93* referred to JAGAN NATH v AJUDHIA SINGH (1912) I L R 35 All 14

his occupancy holding and that the *defendant* was his sub tenant The defendant pleaded that he was a co sharer in the village and that the land in suit was his *khud kasht* *Held* that no

dissented from UDIT TIWARI v BIHARI PANDE (1913) I L R 35 All, 521

AGREEMENT

——— construction of—

See MAHA BRAHMAN I L R 35 All, 412

AGREEMENT AGAINST PUBLIC POLICY

See LAND LORD AND TENANT I L R 35 All 19

——— *Contract Act (IX of 1872) s 23—Compromise forbidden by law—An agreement to compound a non compoundable offence void—Criminal breach of trust—Mortgage—Illegal consideration* It is contrary to public

AGREEMENT AGAINST PUBLIC POLICY—*concld.*

policy to compound a non-compoundable criminal case, and any agreement to that end is wholly void in law: *Held*, therefore, that a mortgage bond executed by a *gomastha* in favour of his master for withdrawal of a prosecution for criminal breach of trust, which is not compoundable under the Criminal Procedure Code, is void (though a settlement out of Court had been suggested by the Magistrate); and a suit by the master to enforce such a bond is not maintainable. *Nubbee Buksh* v. *Hingon, 8 W. R. 112*, commented on. MAJIBAR RAHMAN *v.* MUKTASHED HOSSEIN (1912).
I. L. R. 40 Calc. 113

AGREEMENT OF SALE.

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 54 . I. L. R. 37 Bom. 53

AGREEMENT TO COMPOUND NON-COMPOUNDABLE OFFENCE.

See AGREEMENT AGAINST PUBLIC POLICY.
I. L. L. 40 Calc. 113

AGREEMENT TO SEPARATE.

See CONTRACT ACT (IX OF 1872), s. 25.
. . I. L. R. 37 Bom. 280

AGRICULTURIST.

See AGRICULTURISTS IN THE PUNJAB.

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 60 . I. L. R. 37 Bom. 415

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), s. 2.
I. L. R. 37 Bom. 97, 398

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), s. 20.
I. L. R. 37 Bom. 486

AGRICULTURISTS IN THE PUNJAB.

———— custom of—

See HINDU LAW—ALIENATION.
I. L. R. 40 Calc. 288

AHIRS.

See HINDU LAW—ADOPTION.
I. L. R. 35 All. 263

ALIENATION.

See HINDU LAW—ALIENATION.
I. L. R. 40 Calc. 721

See HINDU WIDOW.
I. L. R. 40 Calc. 555.

See IMPARTIBLE ZAMINDARI.
I L. R. 36 Mad. 325

See LIMITATION . I. L. R. 37 Bom. 231

See MORTGAGE . I. L. R. 40. Calc. 342

———— by father—

See HINDU LAW—ALIENATION.
I. L. R. 40 Calc. 966

ALIENATION—*concld.*

———— by tenure holder—

See MALABAR LAW.
I. L. R. 36 Mad. 380

———— by widow—

See LIMITATION ACT (IX OF 1908), ss. 6 AND 125 . I. L. R. 36 Mad. 570

———— during execution—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 52. I. L. R. 37 Bom. 621

———— power of—

See SHEBAIT . I. L. R. 40 Calc. 895

ALIYASANTANA LAW.

———— *Separate maintenance' grounds for—What are proper grounds.* A member of the Aliyasantana or Marumakkathayam tarwad will be entitled to separate maintenance from the tarwad if there are good grounds for such allotment. What are proper grounds will depend upon the circumstances of each case. The cases show that where there is substantial inconvenience in living in the family house either on account of want of room there or because there are quarrels which make it uncomfortable to a member to live there and where there are several houses belonging to the tarwad and a member lives in one of them and where the karnavan's conduct has afforded a valid excuse for a member living away from the tarwad house, separate maintenance may be awarded. There may be other grounds which on social or economical reasons may be considered proper. Though a member of an Aliyasantana or Marumakkathayam tarwad may not be entitled to a partition or a specific portion of the income which may be an indirect method of enforcing a partition, he is still a co-owner with the karnavan of the tarwad property, and he may in a proper case be entitled to separate maintenance. Waiver (arising from conduct, etc.) is a good plea to a claim for past maintenance. *Raja Yerlagadda Mallikarjuna Prasada Nayudu* v. *Raja Yerlagadda Durga Prasada Nayudu, I. L. R. 24 Mad. 147*, followed. Considering the special and common expenses which a yejman or karnavan has to incur out of the income of the family it is wrong to award a numerically proportionate share of the income to any particular member. The law as to the respective rights of a yejman or karnavan and the junior member of the tarwad, discussed with reference to decided cases. MARADEVI *v.* PAMMAKKA (1913) . . I. L. R. 36 Mad. 203

ANCESTRAL LAND.

See HINDU LAW—ALIENATION.
I. L. R. 40 Calc. 288

APPEAL.

See AGRA TENANCY ACT (II OF 1901), ss. 58, 200 . I. L. R. 35 All. 157

APPEAL—*contd.*

See Agra Tenancy Act (II of 1901) s 199 I L R 35 All 521

See Civil Procedure Code 1908 ss 2 104, 148 I L R 35 All 582

See Civil Procedure Code 1908 s 97 I L R 37 Bom 480

See Civil Procedure Code, 1908, O XX, r 18 I L R 35 All 159

See Civil Procedure Code, 1908, O XXXIV, r 1 O XLIII r 1 I L R 35 All 425

See Civil Procedure Code 1908 O XLI, r 23, O XLIII r 1 (u) I L R 35 All. 427

See Court fees Act (VII of 1870) s 7 cl IX I L R. 35 All 92, 94

See Criminal Procedure Code ss 35 and 408 I L R 35 All 154

See Criminal Procedure Code, s 125 I. L R 35 All. 103

See Criminal Procedure Code, s 195 I L R 35 All. 90

See Criminal Procedure Code ss 517 520 I. L R. 35 All 374

See Mamlatdar's Courts Act (Bom Act II of 1906) s 23 I L R 37 Bom 595

See Sanction for Prosecution I L R 40 Calc 37

See Succession Certificate Act (X of 1865), s 244 I L R 35 All. 448

See Transfer I. L R 40 Calc 259

See Transfer of Property Act (IV of 1882), s 169 I L R 35 All 177

See United Provinces Municipalities Act (I of 1900) s 187 I L R. 35 All 450

See United Provinces Municipalities Act (I of 1900), s 187 I L R 35 All 578

——— dismissal of, for default—

See Civil Procedure Code 1908, O IX r 8 I L. R. 35 All. 105

——— in criminal case—

See Privy Council I L. R. 36 Mad 501

——— over valuation of—

See Refund of Court fee I. L R. 40 Calc. 365

APPEAL—*concld*

——— right of—

See Sanction for Prosecution I L R 40 Calc 239

——— summary dismissal of—

See Civil Procedure Code (Act V of 1908) O XLI, r 11 I L. R 37 Bom. 610

1. ——— — *Small cause case tried as an ordinary suit—Jurisdiction* Where a Judicial officer invested with Small Cause Court jurisdiction tries a suit which he might have tried under the summary procedure, in the ordinary manner, the character of the suit is not thereby altered, and his decree is not appealable *Shan Larbhai* v *Somabhai I L R 25 Bom 417*, followed Indra Chandra Mukherjee v Srish Chandra Banerjee (1913) I L R 40 Calc 537

2 ——— *Concurrent sen*

An accused sentenced to concurrent terms of imprisonment, not one of which is individually appealable has no right of appeal Concurrent sentences cannot, for the purposes of appeal be taken collectively *Suknandan Singh* v *King Emperor, 17 C L J 392* approved *Abdul Khalek* v *King Emperor, 17 C W N 72* not followed The mere admission of an appeal does not preclude the Court from subsequently deter mining the question whether or not an appeal lies in the case Aziz Sheikh v Emperor (1913) I L R. 40 Calc 631

APPEAL TO PRIVY COUNCIL

See Civil Procedure Code 1908, s 110 I L R 35 All. 445

See Land Acquisition Act (I of 1894) s 54 I L R 37 Bom 506

1 ——— *Right of appeal—Proceedings on award by Collector under Land Acquisition Act (I of 1894)—Decision of Court of Lower Burma on reference by Collector of Rangoon —Question as to value of land a matter for local*

right of appeal must be given by express enact ment and cannot be implied *Sandback Charity Trustees* v *North Staffordshire Railway Co, L R 3 Q B D 1, per* Lord Bramwell followed The question in this case, moreover, being only a ques tion of fact as to the value of land acquired under the Act, was in the opinion of their Lord-ships, one for decision by local arbitrators or Courts, and not a matter for determination by a judicial tribunal in England Rangoon Botatoung Company, Ltd, v The Collector Rangoon (1912) I L R. 40 Calc 21

APPEAL TO PRIVY COUNCIL—*contd.*

2. —————————— *Orders under ss. 311, 312 of the Civil Procedure Code, 1882, confirming or setting aside sales—Civil Procedure Code, 1882, ss. 588 (16), 594, 595, 596—Orders declared final by s. 588—Setting aside sale in execution of decree—Non-representation of minor—Irregularities in proclamation of sale—Civil Procedure Code, 1882, s. 287—Under-estimation of value of property—Rights of mother of minor as his natural guardian.* An appeal lies to His Majesty in Council from an order under ss. 311 and 312 setting aside of confirming a sale, notwithstanding the provisions as to such orders being final contained in s. 588 (16) of the Code. The definition or "decree" in s. 2 of the Code is not applicable to Chapter XLV (relating to appeals to His Majesty in Council). For the purposes of that Chapter a definition of "decree" has been therein adopted, which is special, and differs from the meaning it bears elsewhere in the Code. The word decree in that Chapter must be read as being equivalent to "decree, judgment or order." So read final orders may be appealed against to His Majesty in Council under s. 595, and that provision cannot be restricted by the provisions of s. 588 (16) that such orders passed in appeal "shall be final." In this case, which was an appeal from an order of the High Court confirming a sale in execution of decree, and reversing an order of a Deputy Commissioner which set the sale aside, it appeared that the judgment-debtor had died pending the proceedings for attachment and sale, leaving a widow and a minor son, and that the whole of the proceedings subsequent to his death were without notice to any one representing the minor; that the sale proclamation had not been properly made, and did not contain the particulars required by s. 287 of the Code of Civil Procedure, 1882, especially those as to the value of the property, which was grossly under-estimated; that the property was sold for a very inadequate price; and that there was abundant evidence that the appellant had suffered substantial injury therefrom: *Held* (reversing the decision of the High Court), that there had been no proper representation of the minor, and that the above matters constituted material irregularities in publishing and conducting the sale within the meaning of s. 311 of the Code, which justified the setting aside of the sale. There were concurrent decisions of the Courts in India that the Court of Wards never took charge of the property of the minor, and their Lordships came to the same conclusion. *Held,* that, inasmuch as the interests of the minor with regard to the property were not in fact represented by the Court of Wards, it was open to his mother as his natural guardian to appear (as she had done) and represent him in the proceedings, and his appeal was not rendered incompetent thereby. KRISHNA PERSAD SINGH *v.* MOTI CHAND (1913) . **I. L. R. 40 Calc. 635**

3. —————————— *Application for leave to appeal—Whether appeal to Privy Council lies in cases under the Provincial Insolvency Act—Right of appeal to Privy Council, on what it rests—Letters Patent of 1865, cl. 39—Civil Procedure Code (Act V of 1908), ss. 109, 110, and O. XLV, r. 3—Provincial Insolvency Act (III of 1907), ss. 46, 47.* The right of appeal from the High Court to the Privy Council rests on cl. 39 of the Letters Patent of 1865 read with ss. 109 and 110 and O. XLV, r. 3 of the Civil Procedure Code. The Provincial Insolvency Act does not interfere with any right of appeal to the Privy Council that may otherwise exist. *Bombay Burmah Trading Corporation, Ltd.* v *Dorabji Cursetji Shroff, I. L. R. 27 Bom. 415,* referred to. Where an application for insolvency was dismissed under s. 15 of the Provincial Insolvency Act and an appeal was also dismissed in the High Court under O. XLI, r. 11: *Held,* that an appeal to the Privy Council was competent if the matter was appealable in other ways. CHATRAPAT SINGH DUGAR *v.* KHARAG SINGH LACHMIRAM (1913). **I. L. R. 40 Calc. 685**

4. —————————— *Indian Penal Code (Act XLV of 1860), ss. 302, 109—Conviction when to be set aside on appeal—Violation of principles of natural justice or grave injustice done or disregard of legal process—Suspicion of guilt—Inadmissible and hearsay evidence admitted and used to grave prejudice of accused—Absence of reliable evidence.* When their Lordships are of opinion that by some disregard of the form of legal process, or by some violation of the principles of natural justice or otherwise some substantial and grave injustice has been done, then whatever doubts they may have of the appellant's innocence, or whatever suspicion they may entertain of his guilt or however great may be their reluctance to interfere with, or overrule the decisions of the Indian Courts in criminal matters, their Lordships think they are bound to advise His Majesty that the conviction should not be allowed to stand. *In re Dillet, 12 A. C. 459,* referred to and followed. Their Lordships have come to the conclusion that injustice of the kind mentioned above has been done in this case by the admission of a vast body of wholly inadmissible, hearsay and other evidence and the evidence so admitted has been used to the grave prejudice of the accused, and that at the end of the hearing before the Sessions Judge there did not exist any reliable evidence upon which a capital conviction could be safely or justly based. VAITHI NATHA PILLAI *v.* THE KING-EMPEROR (1913) . . **17 C. W. N. 1110**
I. L. R. 36 Mad. 501

APPELLATE COURT.

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 568.
I. L. R. 36 Mad. 477

—————— duty of—

See PRACTICE . **I. L. R. 40 Calc. 376**

APPLICATION.

See SUIT . . . **I. L. R. 40 Calc. 428**

APPORTIONMENT

See LAND ACQUISITION—COMPENSATION
I L R 40 Calc 64

APPORTIONMENT OF COMPENSATION

See LAND ACQUISITION ACT (I OF 1894) ss 3 (*b*) 11, AND 31 (*1*) (?)
I L R 37 Bom 76

———— between zamindar and occupancy ryot—

See LAND ACQUISITION ACT
I L R 36 Mad 395

APPORTIONMENT OF COSTS

See PUNITIVE POLICE
I L R 40 Calc 452

APPROVER.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 337 CL (*3*)
I L R 37 Bom 46

ARBITRATION

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 9 SCH II
I L R 37 Bom 20, 442

See CIVIL PROCEDURE CODE (ACT V OF 1908) SCH II PARA 17
I L R 36 Mad 353

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXIII R 3 SEC 89
I L R 37 Bom 639

1 ———— *Bengal Chamber of Commerce arbitration by—Award filing of—Arbitration Act (IX of 1899) ss 11 13 14 and 15—Rules under the Indian Arbitration Act 1899—Submission—Bought and sold notes—Stamp duty—Form of order—Costs* Where bought and sold notes relating to a contract for the sale of goods contained an arbitration clause and were stamped with one anna stamp *Held* that on the materials before the Court the practice of stamping such documents with one anna stamp was not invalid and the proceedings in arbitration were effectual Under the provisions of the Indian Arbitration Act an award is to be filed not on the application of the parties but at the instance of the arbitrator and when the award has been filed the result is not that there is a suit in which a decree has been passed but that there is an award which is enforceable as a decree *Tribhuvandas Kalliandas Gajjar* v *Jivanchand I L R 35 Bom 196* and *In re Bankruptcy Notice* [1907] *1 K B 478* referred to Such of the rules of Court framed under the Indian Arbitration Act as are not in accordance with the Act are inoperative and no effect can be given to them BAIJNATH *v* AHMED MUSAJI SALEJI (1912) I L R 40 Calc 219

2 ———— *Award—Party to the suit not made party to the submission to arbitration—Party so omitted not a necessary party to the suit* *Held* that an arbitration and an award

ARBITRATION—*concld*

made in the course of a suit would not be rendered invalid by the mere fact that a party whose name was in the record but who was not a necessary party to the suit was not made a party to the arbitration proceedings SABTA PRASAD *v* DHARAM KIRTI SARAN (1912) I L R 35 All 107

ARBITRATION ACT (IX OF 1899)

———— s 10

See INSURANCE I L R 37 Bom 183

———— ss 11, 13 to 15

See ARBITRATION I L R 40 Calc 219

ARMS ACT (XI OF 1878)

———— ss 13, 19 (*e*)—*Arms—Gun—License—Going armed without license—Servant fetching gun for his master—Liability of servant* The accused was sent to an adjacent village by his master who was licensed to bear arms to fetch a gun which he (the master) had left there While so returning with the gun the accused was arrested for going armed in contravention of the provisions of s 13 of the Indian Arms Act (XI of 1878) He was convicted and sentenced under s 19 (*e*) of the Act *Held* acquitting the accused, that the mere temporary possession without a license of arms for purposes other than their use was not an offence within the meaning of s 19 of the Indian Arms Act (XI of 1878) *Emperor* v *Harpal Rai 24 All 454* followed EMPEROR *v* KOYA HANSJI (1912)
I L R 37 Bom 181

———— s 19 (*f*)—*Servant temporary possession of gun by on behalf of master* The petitioner was carrying a gun on behalf of his master with the license to the Magistrate for the purpose of a renewal of the license It was admitted that the object of the petitioner was merely to carry the gun to the Magistrate The petitioner was convicted under s 19 (*f*) of the Act for possessing a gun in contravention of the provisions of the Act *Held* that the conviction of the Petitioner cannot be upheld. *Queen Empress* v *Tota Ram I L R 16 All 276 Probhat Chandra* v *Emperor I L R 35 Calc 219, 12 C W N 279* followed CHARU CHANDRA GHOSH *v* THE KING EMPEROR (1913) 17 C W N 979

ARMY ACT, 1865 (44 & 45 VICT, c 58)

———— s 133

See CIVIL PROCEDURE CODE (ACT V OF 1908) s. 60 CL (*2*) (*b*)
I L R 37 Bom 26

ARREARS OF REVENUE

See COMMISSIONER POWER OF
I L R. 40 Calc [illegible]

ARREST

See CRIMINAL PROCEDURE CODE [illegible] 56 AND 110 I L R [illegible]

ARREST AND SEARCH.

See CONSPIRACY **I. L. R. 40 Calc. 898**

ASCETICS.

See HINDU LAW—INHERITANCE.
I. L. R. 40 Calc. 545

ASSESSMENT.

———— failure to pay—

See LAND REVENUE CODE (BOM. ACT V OF 1879, AS AMENDED BY BOM. ACT VI OF 1901), s. 56.
I. L. R. 37 Bom. 692

———— method of—

See LAND ACQUISITION—COMPENSATION.
I. L. R. 40 Calc. 64

ASSESSORS.

See CRIMINAL PROCEDURE CODE, s. 284 . . **I. L. R. 35 All 570**

———— *Examination of Assessors—Re-trial—Criminal Procedure Code (Act V of 1898), ss. 309, 403, 423, 439—Assessors not to be questioned until their opinions delivered and recorded—Rioting—Right of private defence—Practice.* S. 309 of the Code of Criminal Procedure gives the Judge a discretion to sum up the evidence for the benefit of the assessors if he thinks necessary, but it gives him no power to question them until they have delivered their opinions orally and he has recorded such opinions. When a conviction is set aside and a re-trial ordered, the whole case is re-opened and the accused must be tried again on all the charges originally framed, and having regard to the provisions of s. 423 of the Code of Criminal Procedure, the provisions of s. 403 in that respect cannot apply. *Krishna Dhan Mandal* v. *Queen-Empress, I. L. R. 22 Calc. 377,* and *Queen-Empress* v. *Jabanulla, I. L. R. 23 Calc. 975,* referred to. NAZIMUDDIN *v.* EMPEROR (1912).
I. L. R. 40 Calc. 163

ASSETS.

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), ss. 276 AND 295.
I. L. R 37 Bom. 138

ASSIGNMENT.

See TRADE MARK.
I. L. R. 40 Calc. 814

ASSIGNMENT OF DECREE.

See REGISTRATION ACT (XVI OF 1908), ss. 17 (*b*), 49 . **I. L. R. 36 All. 524**

ASURA FORM OF MARRIAGE.

See HINDU LAW—MARRIAGE.
I. L. R. 37 Bom. 295

ATTACHED PROPERTY.

———— claims to—

See VOLUNTARY PAYMENT.
I. L. R. 40 Calc. 598

ATTACHMENT.

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 60, CL. (2) (*b*),
I. L. R. 37 Bom. 26
I. L. R. 37 Bom. 415, 471
I. L. R. 35 All. 307

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), ss. 276, 295.
I. L. R. 37 Bom. 138

See INSOLVENCY . **I. L. R. 40 Calc. 78**

See LIMITATION ACT (XV OF 1877), SCH. II, ART. 120.
I. L. R. 36 Mad. 383

See REVENUE JURISDICTION ACT, BOMBAY (X OF 1876), ss. 4 (*c*), 5, 6.
I. L. R. 37 Bom. 542

———— of salary of officer in British army—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 60, CL. (2) (*b*).
I. L. R. 37 Bom. 26

1. ———— *Criminal Procedure Code (Act V of 1898), ss. 146 and 148—Refusal to grant time—Duties of the Magistrate—Practice.* It is only when the Magistrate decides that none of the parties was in possession or is unable to satisfy himself as to which of them is in possession, that he can attach property under s. 146 of the Criminal Procedure Code. He cannot say that he is unable to satisfy himself if he has never made the slightest effort to do so. *Mansar Ali* v. *Matiullah, 12 C. W. N. 896,* followed. *Bejoy Madhab Chowdhury* v. *Chandra Nath Chuckerbutty, 14 C. W. N. 80,* distinguished. SHEOBALAK RAI *v.* BHAGWAT PANDEY (1912).
I. L. R. 40 Calc. 105

2. ———— *Warrant—Penal Code (Act XLV of 1860). s. 147—Nazir's power of delegation—"Bailiff"—Civil Procedure Code (Act V of 1908), O. XXI, r. 25.* Where a nazir directed a peon to attach property and fixed a time within which the attachment was to take place and the peon executed the warrant of attachment after the expiration of the time so fixed: *Held,* that the peon, deriving his authority from the Court to make the seizure, could lawfully make the seizure even after the time fixed by the nazir for the execution had expired. The nazir and bailiff are not the same person. The officer to whom O. XXI, r. 25 of the Civil Procedure Code refers is not the nazir, but the peon. *Dharam Chand Lall* v. *Queen-Empress, I. L. R. 22 Calc. 996,* distinguished. SUBED ALI *v.* EMPEROR (1913).
I. L. R. 40 Calc. 849

ATTEMPT.

See PENAL CODE (ACT XLV OF 1860), ss. 457, 511 . **I. L. R. 37 Bom. 553**

ATTESTATION.

See TRANSFER OF PROPERTY ACT (IV OF 1882), ss. 59, 100.
I. L. R. 35 All. 164

ATTESTING WITNESS.

See EVIDENCE ACT (I OF 1872), s 68.
I. L. R. 35 All. 254

ATTORNEY AND CLIENT.

See ATTORNEYS.

——— *Practice—Refusal of attorney to proceed until payment of costs already incurred—Discharge by Attorney—Acceptance of discharge by client—Order for change of attorney—Payment of costs.* A firm of attorneys refused to proceed further in the conduct of a suit, unless their clients paid them as promised a certain sum on account of costs incurred *Held,* that by so doing the attorneys discharged themselves, and the clients were entitled to an order for change of attorney without first paying the costs already incurred to the attorneys on the record *Held,* further, that the mere fact that after the attorneys' refusal the clients instructed them to brief counsel to apply for an adjournment of the suit, which instruction the attorneys declined to accept, did not amount to a refusal on the ... *asum* ... *indra* ... *N* ... 215, followed. MAHESHPUR COAL COMPANY, LTD *v* JATINDRA NATH GUPTA (1912)
I. L. R. 40 Calc. 386

ATTORNEYS.

——— right of audience—

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), ss 6, 27, 36 AND 121 . . **I L R 37 Bom. 464**

AUCTION-PURCHASER.

——— suit by, to recover purchase money—

See LIMITATION . **I. L. R. 40 Calc. 187**

——— title of—

See ADVERSE POSSESSION
I. L R 40 Calc. 173

AUCTION SALE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), s 68, O XXI, R 100
I. L. R. 37 Bom 488

See CIVIL PROCEDURE CODE (ACT V OF 1908), O XXI, R 89
I. L. R 37 Bom. 387

AUTREFOIS ACQUIT.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s 107
I. L. R. 36 Mad 315

See CRIMINAL PROCEDURE CODE, s 403 (*1*)
I. L. R. 36 Mad 308

AWARD.

See ARBITRATION . **I. L. R. 35 All. 107**

AWARD—*concld*

See CIVIL PROCEDURE CODE (ACT V OF 1908), s 9, SCH II, s. 20
I. L. R. 37 Bom 442

See CIVIL PROCEDURE CODE (ACT V OF 1908), s 89, O. XXIII, R 3
I. L. R. 37 Bom. 639

——— filing of—

See ARBITRATION **I. L. R. 40 Calc. 219**

B

BAIL.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s 107, CL (*4*)
I. L. R. 36 Mad. 474

BAILIFF.

See ATTACHMENT **I. L. R 40 Calc. 849**

BAILMENT.

——— *Pledge of cotton by warehouseman to whom it had been entrusted—Pledge to Bank and return of cotton to person who pledged it—No notice by Bank of any other claim—Conversion, action for—Contract Act (IX of 1872), s 178—Admissibility of evidence raising defence not pleaded* The respondent (plaintiff) purchased certain bales of cotton, and entrusted them to the

... second defendant or to his order In a suit for the cotton, the plaintiff claimed delivery of the bales or their value, charged the Bank with conversion of the goods, and in the alternative, if it was held that he was not entitled to such relief, he claimed *to stand in the shoes of the second defendant,* and asked that his rights should be ascertained and declared, and that the securities deposited by the second defendant with the Bank should be marshalled in his favour *Held* (reversing the decision of the High Court, and restoring the

...

... any claim by any other person afforded a complete defence to the action In this view their Lordships deemed it unnecessary to express any opinion on the construction of section 178 of the Contract Act (IX of 1872), on which the Courts below had differed, the first Court holding that it protected the Bank and that the pledge of the cotton was valid, and the Appellate Court holding to the contrary effect. The defence that the bales had been returned had not been pleaded by the Bank in their written statement, but the fact was established during the cross examination of the second defendant as a witness for the plaintiff,

[...]MENT—*concld.*

[...]ved by the inspection of his books. Objec[...]s taken to the Banks raising the defence, [...] application to amend the written state[...] was refused by the first Court. But later [...] case evidence of the return of the cotton [...]eld to be admissible in regard to the alter[...] claim of the plaintiff. *Held*, that the [...]ence was rightly admitted having regard to [...] claim of the plaintiff to marshall securities, [...] that if properly admitted it was admissible [...] all purposes. BANK OF BOMBAY *v.* NANDLAL [...]AKERSEY DAS (1912). **I. L. R. 37 Bom. 122**

[...]ALLAVACHARYA GOSSAINS.

See HINDU LAW—ENDOWMENT.
I. L. R. 35 All. 283

BANKER AND CUSTOMER.

——— *Payment to Bank with instructions as to disposal, effect of—" In suspense account," meaning of.* When *A* paid money into a bank with instructions to pay over the same to *B* who had no account with the bank, and the bank wrote to *B* stating that they had received the money and held the same in suspense account pending instructions from *B*. *Held*, on appeal from *The Official Assignee of Madras* v. *Rajam Ayyar, I. L. R. 33 Mad. 299*, by MILLER and MUNRO, JJ., that the bank held the amount as agents of *A* for remittance to *B*, and not as bankers either of *A* or *B*. *The Official Assignee of Madras* v. *Smith, I. L. R. 32 Mad. 68*, distinguished. *Per* ABDUR RAHIM, *J.* That the relationship between the bank and *B* was not that of debtor and creditor and that the bank held the money in a fiduciary capacity as bailee or agent. A banker holding money of a person " in suspense" does not treat it like an ordinary customer's money. *The Official Assignee of Madras* v. *Smith, I. L. R. 32 Mad. 68, 69*, dissented from. OFFICIAL ASSIGNEE OF MADRAS *v.* RAJAM AYYAR (1913).
I. L. R. 36 Mad. 499

BAR-COUNCIL, RESOLUTIONS OF.

——— *Etiquette affecting Counsel—Counsel as witness—Retainer, acceptance of—Professional ethics.* The following resolutions of the Bar-Council approved :—" (*a*) If counsel knows or has reason to believe that he will be an important witness in a case, he ought not to accept a retainer therein. (*b*) If he accepts a retainer not knowing or having reason to believe that he will be such a witness, but at the opening or at any subsequent stage before evidence is concluded it becomes apparent that he is a witness on a material question of fact, he ought not to continue to appear in the case unless he cannot retire without jeopardising the interests of his client. (*c*) If counsel knows or has reason to believe that his own professional conduct on matters out of which the action arises is likely to [...]gned in the case, he ought not to accept [...] If he accepts a retainer not know[...] believe that his own

BAR-COUNCIL, RESOLUTIONS OF—*contd.*

professional conduct in such matters is likely to be impugned, but finds in the course of the case that it is so impugned, he ought to adopt the same course of conduct as is mentioned in clause (*b*) *ante.* (*e*) In either of the cases mentioned in clauses (*b*) and (*d*), there is no rule of professional eithics which debars counsel, if he continues to act as counsel in the case, from going into the witness-box and being cross-examined. "

Although the resolutions of the Bar-Council are not binding on the Courts, the Bar-Council is the recognised authority on matters of professional conduct and etiquette affecting counsel, and its opinion is of the greatest weight and value. There is nothing necessarily unprofessional in counsel giving evidence in a case in which he appears as such. *Sethna* v. *Mirza Mahomed Shirazi, 9 Bom. L. R. 1044, Cobbett* v. *Hudson, 1 E. & B. 11, Stones* v. *Byron, 4 Dowl. & L. 393, Deane* v. *Packwood, 4 Dowl. & L. 395n, Corea* v. *Peiris, [1909] A. C. 549 ; 14 C. W. N. 86, Nundo Lal Bose* v. *Nistarini Dassi, I. L. R. 27 Calc. 428, referred to. Curry* v. *Walter, 1 Esp. 456*, distinguished. As a general practice, however, it is undesirable when the matter to which counsel depose is other than formal, that they should testify either for or against the party whose case they are conducting. Under s. 118 of the Evidence Act, counsel, although they may be engaged in the case, are competent to testify whether the facts in respect of which they give their evidence occur before or after their retainer. *Cobbett* v. *Hudson, 1 E. & B. 11*, referred to. WESTON AND OTHERS *v.* PEARY MOHAN DASS (1912).
I. L. R. 40 Calc. 898

BARRISTERS.

——— *English barristers practising both as barrister and solicitor at Shanghai — Partnership between them, if contrary to etiquette and law—Sale by partner of share of business to co-partner—Covenant not to practice for a reasonable time—Suits by the other partner for injunction—Agreement by solicitor to pay a share of proceeds o[...] business to clerk, if unprofessional.* There is n[...] reason why a person who carries on both the barri[...] ter and the solicitor's branches of the professi[...] (as at Shanghai) should not enter into an agr[...]ment not to practise for a reasonable time. Wh[...] one of two persons who carried on at Shangha[...] partnership the business of both solicitor [...] barrister, sold his interest in it to his par[...] covenanting at the same time not to practise [...] for a term of five years : *Held*, that the [...] was entitled to an injunction restraining the f[...] from practising before the expiry of the p[...] HOME *v.* EDWARD DOUGLAS (1912).
17 C. W. [...]

BENAMIDAR.

See LIMITATION ACT (IX OF 1908[...]) ARTS. 91 AND 120.
I. L. R. 35 [...]

[BE]NAMI PURCHASE.

See Civil Procedure Code, 1908, s 66 . . I L R, 35 All. 138

[BE]NEFITS OF DECREE.

——— suit for—

See Principal and Agent I L R. 40 Calc 335

[BE]NGAL ACTS.

——— 1859—X.

See Bengal Rent Act

——— 1865—VIII.

See Rent Recovery Act

——— 1866—II.

See Calcutta Suburban Police Act

——— 1866—IV.

See Calcutta Police Act

——— 1868—VII.

See Bengal Land Revenue Sales Act.

——— 1876—VI

See Chota Nagpur Encumbered Estates Act

——— 1879—I

See Chota Nagpur Landlord and Tenant Procedure Act

——— 1880—VI.

See Bengal Drainage Act

——— 1884—III.

See Bengal Municipal Act

——— 1899—I.

See General Clauses Act

——— 1899—III

See Calcutta Municipal Act.

——— 1908—VI.

See Chota Nagpur Tenancy Act

——— 1910—I.

See Excise Act (E B and Assam)

[B]ENGAL CHAMBER OF COMMERCE.

——— arbitration by—

See Arbitration I. L. R. 40 Calc 219

[BE]NGAL DRAINAGE ACT (BENG VI OF 1880).

——— ss 32, 35, 42(*b*), 44, sub-ss. (*1*) [an]d (2)—*Drainage charges, suit by landholder to [rec]over, from tenant—Plaintiff, if must prove land [to] have been benefited—Commissioners' report appor[tio]ning liability, if admissible to prove benefit—[Te]nants' liability, if must be determined by Collector [—]Notice on tenant, if necessary—Jurisdiction of*

BENGAL DRAINAGE ACT (BENG VI OF 1880)—*concld*

——— s 32—*concld*

Civil Court—Second Appeal—Civil Procedure Code (Act XIV of 1882), s 586 A sum payable by a tenant to a landholder under cl (*b*) of s 42 of the Bengal Drainage Act (Beng VI of 1880) being recoverable (under the provisions of sub s (*1*) of s 44 of that Act as if the same were an arrear of rent, a suit to recover the same comes under cl (*8*) of Sch II of the Small Cause Courts Act and is not a suit of a Small Cause Court nature within the meaning of s. 586 of the Civil Procedure Code of 1882 The mere fact of a sum of money having been declared under the Act to be payable by a landholder in respect of any land is not sufficient to make a tenant of the land liable to contribute towards it Cl (*b*) of s 42 of the Act requires that the landholder should show in the first instance that the land of any particular tenant, against whom a claim has been made, has been benefited by any scheme or works The Commissioners' report under s 32 of the Act cannot be treated as *primâ facie* evidence in favour of the landlord in a suit to recover drainage charges against tenants *Quære* Whether the power of determining any question as to the amount which any tenant is to pay in respect of drainage charges is not intended to be exclusively vested in the Collector, and whether a notice under sub s (*2*) of s 44 would not therefore be a necessary preliminary to the maintainability of a suit to recover such charges from a tenant Basanta Kumar Rai *v* Ram Chandra Roy Chaudhry (1903)
17 C W N. 499

BENGAL MUNICIPAL ACT (III OF 1884).

—*Occupier* The term 'holding" as used in s 85 of the Bengal Municipal Act means land held by an occupier under one title or agreement and surrounded by one set of boundaries The rates assessed upon holdings according to s 10 are payable by the owner that is to say, the person above the occupier, if the occupier himself is not the owner, under s 103 Where there is an intermediate interest between the owner and the occupier, such intermediate holder, and not the ultimate owner, is the person liable to pay rates Hamid Hossain *v* Patna Municipality (1911)
17 C W. N. 812

——— ss 85, 116—*Assessment of tax on "circumstances and property"—"Circumstances," meaning of—Valuation of "circumstances and property" by Municipality, if may be reviewed by Civil Court—Court if may question assessment when "circumstances and property" outside Municipality are considered —Onus on Municipality to disclose basis of assessment—Non-disclosure, presumption from* The "circumstances and property within the Municipality," "according to" which a tax upon persons occupying holdings within the

NGAL MUNICIPAL ACT (III OF 884)—contd.

——— s. 85—concld.

nicipality is authorised to be imposed by s. of the Bengal Municipal Act, signify the "means d property" of the person in question within e Municipality. *Chairman of Giridhi Municipality Suresh Chunder Mazumdar, I. L. R. 35 Calc. 59; 12 C. W. N. 709*, followed. It is not open o the Courts to assess the value of the "circum-stances and property" for the purposes of s. 85. Where in a suit brought to question the legality of a tax imposed upon the plaintiff under s. 85, the defendant Municipality averred that the tax had been imposed upon "the circumstances and property" of the plaintiff within the Municipality but in the evidence did not disclose the facts show-ing that this was done, and the lower Appellate Court found facts inconsistent with the case that only the "circumstances and property" within the Municipality were considered: *Held*, that the presumption in s. 106 of the Evidence Act applied, and the plaintiff must be taken to have made out his case that the assessment was not according to the plaintiff's "circumstances and property" within the Municipality. DEBNARAIN DUTT *v.* CHAIRMAN OF THE BARUIPUR MUNI-CIPALITY (1913) . . **17 C W. N. 1230**

1. ——— **ss. 261, 273, cl. (2)**—*Carrying on offensive or dangerous trade—Scope of s. 261—Fixing of local limits a condition precedent to prosecution under s. 273—Proceedings of Municipal bodies how to be proved—Presumption as to the regular performance of official acts, if applies to supply deficiency in proof—Evidence Act (I of 1872), ss. 78 (5), 114, illustration (e).* Where the petitioner was convicted under cl. (2) of s. 273 of the Bengal Municipal Act for having used without a license certain premises within the Cuttack Municipality for the purpose of storing hides in contravention of s. 261 of the Act, but no resolution passed by the Commissioners at a meeting fixing the local limits within which licenses should be required under s. 261 for offensive or dangerous trades was on the record, nor was there any secondary evidence of any such resolution: *Held*, that the conviction must be set aside, as the prosecution had failed to prove the existence of the resolution and if from other circumstances it were assumed that such a resolution was passed, the prosecution had failed to prove its purport in the manner required by law. The presumption that official acts have been regularly performed [s. 114, Evidence Act, illustration (e)] cannot supply the deficiency in the proof. As a rule the contents of documents cannot be proved inferentially. A legitimate way of proving the proceedings of a Municipal body in British India, is by a copy of such proceedings certified by the legal keeper thereof or by a printed book purporting to be pub-lished by the authority of such body as laid down in cl. 5 of s. 78 of the Evidence Act. The language used in s. 261 of the Bengal Municipal Act is wide enough to enable the Commissioners ...lity to apply the section to all places

BENGAL MUNICIPAL ACT (III OF 1884)—concld.

——— s. 261—concld.

within Municipal limits or the entire area within the Municipal boundaries. *Quære*: Whether the penultimate clause of s. 261 empowers the Commis-sioners to do more than withhold the license in individual cases, each case being considered on its own merits. MOKRAM ALI *v.* THE CUTTACK MUNICIPALITY (1913) . . **17 C. W. N. 531**

2. ——— **ss. 261, 273 (2)**—*Carrying on offen-sive or dangerous trade—Scope of s. 261—Fixing of local limits a condition precedent to prosecution under s. 273—Proceedings of Municipal bodies how to be proved—Presumption as to the regular perfor-ance of official acts, if applies to supply deficiency in proof—Evidence Act (I of 1872), ss. 78 (5), 114, illustration (e).* Where the petitioner was convicted under cl. 2 of s. 273 of the Bengal Municipal Act for having used without a license certain premises within the Cuttack Municipality for the purpose of storing hides in contravention of s. 261 of the Act, but no resolution passed by the Commissioners at a meeting fixing the local limits within which licenses should be required under s. 261 for offensive or dangerous trades was on the record, not was there any secondary evidence of any such resolution: *Held*, that the conviction must be set aside, as the prosecution had failed to prove the existence of the resolution, and if from other circumstances it were assumed that such a resolution was passed, the prosecution had failed to prove its purport in the manner required by law. The presumption that official acts have been regularly performed [s. 114, Evid-ence Act, illustration (e)] cannot supply the defi-ciency in the proof. As a rule the contents of documents cannot be proved inferentially. A legitimate way of proving the proceedings of a Municipal body in British India is by a copy of such proceedings certified by the legal keeper thereof or by a printed book purporting to be published by the authority of such body as laid down in cl. (5) of s. 78 of the Evidence Act. The language used in s. 261 of the Bengal Muni-cipal Act is wide enough to enable the Commis-sioners of a Municipality to apply the section t all places within Municipal limits or the enti area within the Municipal boundaries. *Quære* Whether the penultimate clause of s. 261 em powers the Commissioners to do more than wit hold the license in individual cases, each ca being considered on its own merits. SYED MO RAM ALI *v.* THE CUTTACK MUNICIPALITY (191 **17 C. W. N. 5**

BENGAL RENT ACT (X OF 1859).

——— **s. 23 (6)**—*Tenant dispossessed by l lord—Possessory suit in Civil Court, if lies—Sp Relief Act (I of 1877), s. 9—"Illegal ejectm meaning of.* Per CURIAM (N. R. CHATTERJEA *contra*). So long as the relation of landlor tenant is subsisting between the parties, the te if forcibly dispossessed of his land by the lord, is precluded by cl. (6) of s. 23 of Act

BENGAL RENT ACT (X OF 1859)—*concld*

———— s 23—*concld*

Relief Act and the words "illegal ejectment" as used in s 23, cl (6) of Act X of 1859 *Per* N R CHATTERJEA, *J*—Illegal ejectment which gives rise to a cause of action under s 23 (6) of Act X of 1859 is ejectment nominally in conformity with, but really in contravention of, the provisions of the rent law for the ejectment of tenants by landlords Where therefore a tenant who has been dispossessed by his landlord sues to recover possession on the strength of his previous possession, s 23 (6) of Act X of 1859, is no bar to such a suit under s 9 of the Specific Relief Act *Janardan Acharjee* v *Haradhan Acharjee, 9 W R 513,* referred to *Khettra Nath Ghattak* v *Peru Bauri, 15 C W N 357,* distinguished JAMLA SINGH *v* E J KINGSLEY (1913)
17 C W N. 1201

———— s. 109—*Execution against immoveable property of one of several judgment debtors—Moveable property of all, if must be first exhausted—Arrest of judgment debtor, if a condition precedent—Decree holder, if must proceed against moveables first, even when insufficient to satisfy decree* S 109 of Act X of 1859 contemplates the case of a single execution creditor and a single judgment debtor, it does not specifically refer to the case of a joint and several decree against a number of judgment debtors Where, therefore, a joint and

moveable property But he is not bound before so applying to proceed against the persons and moveable properties of the other judgment debtors The decree holder must first take out execution against the moveable property of the judgment debtor against whom he wishes to proceed even when the moveable property of the judgment debtor is insufficient to satisfy the decree in full

ment debtor s possession in the interval An application for the arrest of the judgment debtor is not a condition precedent to the decree holder s proceedings against the immoveable property of the judgment debtor BHIKARI SUKUL *v* GADADHAR RAMANUJ DAS (1912) **17 C. W N. 87**

BENGAL TENANCY ACT (VIII OF 1885)

———— *Bengal Rent Act (VIII of 1869)—Annulment of under tenure—Erroneous rulings, effect of* A tenure was sold after the Bengal Tenancy Act had come into operation in execution of a decree passed before that Act was enforced It was at that time erroneously held by Courts that the provisions of the Bengal Rent Act (VIII of 1869) and not those of the Bengal Tenancy Act governed such sales and the plaintiff had annulled the under tenures in a manner sufficient under the old Rent Act though not by a formal notice as required by the Bengal Tenancy Act In a suit by an under tenure holder for declaration of title and recovery of possession of his under tenure *Held,* that the provisions of the Bengal Tenancy Act would govern the annulment of under tenures and that the under tenure not having been annulled under the provisions of the Bengal Tenancy Act, this annulment was inoperative though based on erroneous decisions of Courts BIRENDRA KISHORE MANIKYA *v* AHAMMAD ALI (1912)
17 C W. N 619

———— ss. 3 (*16*), 58 (*3*)

See COLLECTOR . **I. L R. 40 Calc 465**

———— s. 170 (*1*) and (*3*)—*Purchaser of holding, not recognised by landlord, if may make deposit—'Interest voidable on sale," meaning of— Judgment debtor,' meaning of* A purchaser of a holding who has not been recognised as a tenant by the landlord has an interest in the holding which is voidable on a sale held in execution of a decree for rent against the registered tenant, within the meaning of cl (*3*) of s 170 of the Bengal Tenancy Act A person claiming to be a tenant for a period longer than 12 years to the knowledge of the landlord acquires an interest in the holding within the meaning of sub s (*3*) of s 170 of the Act. Such a person does not come within the description of 'judgment debtor' in sub s (*1*) of the section A purchaser of a holding who has been recognised by the landlord as a tenant cannot make a deposit under the section TARAK DAS PAL CHOUDHURY *v* HARISH CHANDRA BANNERJEE (1912) **17 C. W. N. 163**

———— s. 25

See LANDLORD AND TENANT
I. L R. 40 Calc. 870

———— s 30.

See ENHANCEMENT OF RENT
I L. R. 40 Calc 29

———— ss 30 (*b*), 37, 105, 107, 109

See SUIT . **I L R. 40 Calc. 428**

1 ———— s 49—*Under raiyat, ejectment of*—

raiyat from ejectment until the end of the agricultural year next following the year in which

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— s. 49—*concld.*

the notice to quit is served upon him by the landlord. The rules of English law or even of the law prevailing in the Presidency towns concerning the length of the notice, should not be applied in such matters. Where a notice to quit which was served on the under-raiyat on the 10th April 1908 (about the end of Choitra 1314) asked the tenant to leave within the first of Baisak 1315, and the suit was instituted on the 3rd August 1909: *Held*, that the notice was not insufficient in law. HARIFULLAH GANI *v.* BENODE BEHARY MANDAL (1913). **17 C. W. N. 932**

2. ——— s. 49 (*b*)—*Under-raiyat holding under an occupancy raiyat, if can be ejected without notice—Landlord, meaning of.* An under-raiyat who is under an occupancy raiyat cannot be ejected by the landlord without notice prescribed by s. 49 (*b*) of the Bengal Tenancy Act. The intervention of a tenure holder between the landlord and the under-tenant makes no difference. *Amirulla* v. *Nazir, I. L. R. 31 Calc. 932*, followed. The term "landlord" includes a person who on the extinction of other rights comes into direct relationship with the tenant or under-tenant as the case may be. RASIK LAL SEN *v.* KRISHNA MOHAN MONDAL (1912) . . . **17 C. W. N 781**

——— s. 53—*Agreement to pay rent in monthly kists and interest on each kist from date of its falling due, how far valid—Landlord, if can impose obligation on tenant to pay monthly kist—Interest on arrears—Applicability of the Interest Act.* Where there was a contract between the landlord and the tenant executed after the passing of the Bengal Tenancy Act whereby provision was made for payment of the rent in monthly *kists* and also for payment of interest on each *kist* from the time when it fell due, and the interest so calculated exceeded 12½ per cent. per annum: *Held*, that the landlord was entitled to impose on the tenant an obligation to pay the monthly *kists*. The words of s. 53 of the Bengal Tenancy Act indicate that there may be an agreement in modification of the provision for four equal instalments. But having regard to s. 178, sub-s. 3, cl. (*h*) of the Bengal Tenancy Act, the landlord was entitled only to the interest secured to him by s. 67 of the Bengal Tenancy Act, the Interest Act not being applicable. *Hemanta Kumari* v. *Jagadindra Nath, I. L. R. 22 Calc. 214*, distinguished. MONOHAR MUKERJEE *v.* KHETTRA NATH SABUI (1913) . . . . . **17 C. W. N. 820**

——— s. 69—*Crop, apportionment of—Non-attendance of landlord—Liability of tenant if he appropriates whole crop.* Under s. 69 of the Bengal Tenancy Act if the landlord does not attend to take the share of the crops the remedy of the tenants is by way of an application to the Collector, but if it is found that the tenants have actually appropriated all the crops they are plainly liable to indemnify the landlord. KAMALESHWARI PERSHAD SINGH *v.* KANHARI SINGH (1913). **17 C. W. N. 1159**

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— s. 74.

See ABWAB . **I. L. R. 40 Calc. 806**

——— s. 85—*Permanent under-raiyati lease—Raiyat's holding, purchase of, by landlord in rent decree—Suit for khas possession—ss. 167, 49, 22—Notice.* Where a permanent lease was given to an under-raiyat by a registered instrument and the landlord purchased the holding of the raiyat in execution of a decree for arrears of rent and sued to eject the under-raiyat: *Held*, that the under-raiyati lease was invalid under the provisions of sub-s. (*2*) of s. 85 of the Bengal Tenancy Act and that the landlord was entitled to take *khas* possession by ejecting such under-raiyat without annulling the same under s. 167 and without giving a notice in the terms of s. 49 of the Bengal Tenancy Act. *Held*, also, that the rights of the under-raiyat were not protected by sub-s. (*1*) of s. 22 of the Bengal Tenancy Act. *Peary Mohun Mookerjee* v. *Badul Chandra, I. L. R. 28 Calc. 205*, followed. GANGADHAR MONDAL *v.* RAJENDRANATH GHOSE (1913) **17 C. W N. 860**

1. ——— s. 85 (*2*)—*Under-raiyati lease for term exceeding 9 years erroneously registered, if passes title—Previous possession as tenant not claimed—Oral evidence if admissible to prove tenancy—Evidence Act (I of 1872), s. 91.* A sub-lease created by a raiyat for a term exceeding nine years and rroneously registered in contravention of the provisions of s. 85, cl. (*2*) of the Bengal Tenancy Act, is not admissible in evidence to prove the tenancy. Oral evidence to prove the tenancy in such a case is inadmissible under s. 91 of the Evidence Act. Where the sub-lease registered in contravention of s. 85, cl. (*2*) of the Bengal Tenancy Act, was the only title on which the grantee relied so that he could not fall back on any prior possession as tenant or otherwise, his suit to recover *khas* possession was dismissed. *Lala Sorabh Narain Lal* v. *Catherine Sophia, 1 C. W. N. 248, Manick Borai* v. *Bani Charan Mandal, 13 C. L. J. 649*, referred to. Recognition of the plaintiff by the superior landlord as tenant was in the circumstances of no avail to him. JARIP KHAN *v.* DORFA BEWA (1912) . . . . **17 C. W. N. 59**

2. ——— *Permanent under-raiyati lease, registered, effect of—Registration Act (XVI of 1908), s. 49—Registration in contravention of law, effect of.* *Held*, upon are view of authorities, that a permanent sub-lease by a raiyat does not confer any title on the under-raiyat and is inadmissible to prove the tenancy, even when registered, as registration in controvention of the statutory prohibition contained in sub-s. (*2*) of s. 85 of the Bengal Tenancy Act is of no effect. *Jarip Khan* v. *Darfa Bewa, 17 C. W. N. 59*, followed. TELAM PRAMANIK *v.* ADU SHEIKH (1913). **17 C. W. N. 468**

——— ss. 95-98.

See COMMON MANAGER. **I. L. R. 40 Calc. 150**

BENGAL TENANCY ACT (VIII OF 1885)—*contd*

——— s. 98 (4)—*Common Manager, power of —District Judge jurisdiction of* Where, subsequent to the appointment of a common manager, the title of an alleged co owner being disputed had to be decided by a competent Court *Held, that the District Judge under cl (4) of s 98 of* the Bengal Tenancy Act had jurisdiction to direct the common manager to retain the disputed share of the rent in his hands till the title of the co owner was adjudicated upon BHABANGANA DEBYA *v* HORENDRA NARAIN ROY (1912) **17 C W N. 445**

——— s. 101, cls 2(a), 3

See ULTRA VIRES I. L R. 40 Calc. 123

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Court—Application and scope of s 108A Where after the final publication of the record of rights fair and equitable rent was settled by the Settlement Officer by his order, dated the 21st December 1908, in a proceeding under s 105 of the Bengal Tenancy Act an appeal by the tenants against which order was dismissed by the Special Judge on the 9th April 1906 the substantial matter in controversy before the Special Judge being whether the rate of rent settled was or was not equitable, no question being raised as to the area, and subsequently it being discovered that the area had been erroneously put down, the Settlement Officer on the 2nd September 1907 amended *the record so as to alter the entry about* area and the rent payable *Held* that the *amendment of the record was not under s* 108A of the Bengal Tenancy Act and was not without jurisdiction. The Settlement Officer acted in the exercise of a power inherent in every Court to correct obvious errors or incidental slips in its own record *Mellor v Swire, 30 Ch D 239, 247, Lawrie v Lees, 7 App Cas 19, 36, Hatton v Harris [1892] A C 5472, 560,* referred to *Held* further, s 108A of the Bengal Tenancy Act appl as onl to Revenue Officers especially em

to correct the record when there has been a *bona fide* mistake made either by the Settlement Officer or one of the parties concerned The section in substance authorises a Settlement Officer to reconsider the matter on the merits RAJ MOHAN GUHA *v* ALAM GAZI (1912) **17 C W N 625**

Record of ri
sue—Rent,
An entry in
accordance with the provisions of ss 104A to 104F, unless altered by means of a suit brought as contemplated by s 104H, is conclusive, and no

——— s. 104A—*concld*

suit is afterwards maintainable for enhancement of rent on the ground of an excess in area in spite of their having been a stipulation to that effect in the *kabuliyat* executed by the settlement proceedings S 113 of the tenant prior to the Bengal Tenancy Act is no bar to the maintainability of a suit of this character and has no application in such circumstances PROSONNA KUMAR ADHIKARI *v* RACHIMUDDIN HOWLADAR (1912) **17 C W N 153**

——— s 104H—*Suit under scope of—Neces-*

names of the defendants recorded as occupancy raiyats may be expunged from the record and the lands in their occupation recorded in the *khatian* as the *nij jote* of the plaintiffs, are entirely foreign to a suit under s 104H. A suit under s 104H should have as defendant only the person benefited by the rent entry or by the omission to make a rent entry as the case may be, and in a suit brought for the determination of the question whether the

necessary parties defendants Two conditions must be satisfied in order that a party may be considered a necessary party defendant, namely, *first* there must be a right to some relief against him in respect of the matter involved in the suit, and *secondly* his presence is *necessary in order* to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit and a person who is only indirectly or remotely interested is not a necessary party JOGENDRANATH SINGH *v* SECRETARY OF STATE FOR INDIA (1912) **17 C W. N. 835**

1 ——— s 105—*(Before amendment by Act I E B and A C of 1908)—Record-of rights—Tenants settled by trespasser entered as raiyats—Recovery of land by owner —Latter if may apply for settlement of rent—Relation of landlord and tenant how created* Where land on which tenants were settled by zemindar A was adjudged by the Civil Court to be within the ambit of the zemindari of B, and the tenants were entered in the record of rights as raiyats on the land *Held* that an application for settlement of rent under s 105, Bengal Tenancy Act (before amendment by Act I E B. and A C of 1908) by B against the tenants was competent Tenancy in this country is created not only by contract but also by occupation in

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— s. 105—*concld.*

the case of agricultural land. *Nityanund Ghose* v. *Kishen Kishore, W. R. (1864), Act X Rulings, 82: Surnomoyee* v. *Dina Nath, I. L. R. 9 Calc. 908, Lukhee Kanto* v. *Sumeruddi, 21 W. R. 208, Lalun Monee* v. *Sonamonee, 22 W. R. 334, Azim Sirdar* v. *Ram Lal, I. L. R. 25 Calc. 324, Binad Lal* v. *Kalu Pramanik, I. L. R. 20 Calc. 708,* referred to. Consent of both parties is not essential to establish the relation of landlord and tenant. In this case there was such consent as between A and the tenants, and B merely stepped into A's shoes by operation of law. KALI PRASUNNO DAS *v.* BHAGWAN MALI (1912) . **17 C. W. N. 348**

2. ——— *Proceedings, if lies, only when no rent previously agreed upon—Tenant, recorded as occupancy raiyat, if may claim fixity of rent by proof of uniform payment—Presumption, if may be rebutted by collection papers—Admissibility of same as independent evidence—Evidence Act (I of 1872), ss. 32, 34.* S. 105 of the Bengal Tenancy Act is not restricted in its application only to cases where no rent has been fixed by agreement of parties. Notwithstanding the final publication of a record-of-rights in which the tenants are entered as occupancy rai ats, they are entitled in a proceeding under s. 105 of the Bengal Tenancy Act to rely on the presumption mentioned in s. 50, cl. (2) of the Act if they have produced rent-receipts for 20 years showirg payment of a uniform rate of rent. When the landlord's collection papers are produced to rebut the presumption of fixity of rent, they are, under s. 34 of the Evidence Act, admissible as corroborative and not independent evidence. The law as embodied in s. 34 of the Evidence Act and s. 42 of Act II of 1855 hough not identical is the same in this respect. *Belayet Khan* v. *Rash Behary, 22 W. R. 549,* not followed. *Surnomoyi* v. *Johur Mohomed Yasyo, 10 C. L. R. 545,* followed. If evidence is adduced to make the account papers admissible statements under s. 32 of the Evidence Act, corroboration would not be needed in terms of 34. *Rampyarabai* v. *Balaji Shridhar, I. L. R. Bom. 294, Dukha Mondal* v. *Grant, 16 C. L. 24,* followed. AKTOWLI *v.* TARAK NATH GHOSE 912) . . . . **17 C. W. N. 774**

——— s. 106—*Revenue officer, if can pass ree for possession—Suit transferred to Civil Court.* 106 of the Bengal Tenancy Act provides for institution of suits before revenue officers and icates the points that can be decided by the enue officer but it does not vest the revenue er with power to pass a decree for possession. ere suits under s. 106 of the Bengal Tenancy were not heard by the revenue officer but were sferred to a competent Civil Court for trial r the 1st proviso to that section: *Held,* the mere fact that they were transferred to urt which in its ordinary jurisdiction might been passed a decree for possession, could widen the permissible scope of these particular suits. NILMANI KUMAR *v.* KEDAR NATH GHOSH (1913) . . **17 C. W. N. 750**

——— s. 147A.—*Decree for enhanced rent passed on compromise—Amount of previous rent not ascertained—Tenant, if bound by decree—Irregularity or nullity.* A decree for rent passed in accordance with a compromise, in contravention of the provisions of s. 147 A of the Bengal Tenancy Act, *i.e.,* without recording evidence to show what the amount of rent was before the dispute arose, is made without jurisdiction and the tenant is not bound to have it set aside. As the tenant cannot waive the irregularity, it amounts, according to the test laid down in *Holmes* v. *Russel, 9 Dowl. 487,* to a nullity. SARJUGSHARAN *v.* LAL DUKHIT MAHATO (1913) . **17 C. W. N. 496**

——— s. 148, cl. (*h*).

See "LANDLORDS' INTEREST," MEANING OF . **I. L. R. 40 Calc. 462**

——— s. 159—*Suit for rent of holding against one of several heirs of the raiyat—Decree, rent decrees and sale if passes whole tenure—One tenant, when representative of the rest—Question of fact.* Although under s. 43 of the Contract Act a landlord may bring a suit for the whole rent of the holding against one of several raiyats, all the tenants of the holding must ordinarily be joined as parties in order that the decree and the sale in execution of it may pass the entire holding and not merely the right, title and interest of the judgment-debtor. Where, however, one of a number of tenants is put forward by the rest as their representative he can be regarded as the sole tenant for the purposes of a suit for the arrears of rent within Ch. XIV of the Bengal Tenancy Act. Whether one of several tenants can be regarded as a representative of the rest must depend on the cirumstances of each case, and is largely, if not essentially, a question of fact. *Doolar Chand Sahu* v. *Chabeel Chand, L. R. 6 I. A. 47,* distinguished. CHAMATKARI DASSI *v.* TRIGUNA NATH SARDAR (1913) . **17 C. W. N. 833**

——— ss. 160, 165, 167—*Se-putni if a protected tenure—Dur-putni extinguished under s. 167—Effect on se-putnidar who has not been ejected—Right to collect rent.* A *se-putindar,* who has not been ejected in a proceeding under s. 167 of the Bengal Tenancy Act, is not entitled to continue collecting rents from the tenants when the *dur-putni* under which he holds has been extinguished under that section. On the extinction of the *dur-putni* the tenants became liable to pay their rent directly to the *putnidar.* The extinction of the *dur-putni* necessarily carries with it the extinction of the *se-putni* which is not a protected tenure under the definition in s. 160 of the Bengal Tenancy Act. MAKHAM DAS KULI *v.* RAM CHANDRA GOSSWAMI (1912) . . . . **17 C. W. N. 1064**

——— s. 167—"*Date of sale*", *meaning of—"Notice" if means express notice.* The words,

BENGAL TENANCY ACT (VIII OF 1885)—*contd*

——— s **167**—*concld.*

date of sale in s 167 of the Bengal Tenancy Act means the date on which the sale of the holding or tenure has actually taken place and not the date of the confirmation of the sale If the purchaser has had knowledge or intimation of an incumbrance, that would be sufficient notice of it

he had notice of the incumbrance these persons had on the holding YUSUF GAZI v ASMAT MOLLAH (1912) **17 C W N 440**

——— s **171**—*Deposit under—Court making no enquiry as to depositor having interest voidable on the sale—Revision—Civil Procedure Code (Act V of 1908)* ... *ularity*— de under ordered claim in days

but there was no enquiry as to whether the depositor had any interest voidable on the sale and no decision upon the point *Held* that the Court

was not appealable as the original application having been made by a person not a party to the suit did not come within the provisions of s 47 of the Civil Procedure Code *Hira Lal Ghose* v *Chandra Kanta Goose I L R 26 Calc 539* referred to *Quære* Whether under the provisions of s 153 of the Bengal Tenancy Act the District Judge had revisional jurisdiction in the matter GOBINDA SUNDAR SINHA CHOWDRY v CHAND MEAH (1912) **17 C W N 602**

——— s **174**—*Order refusing to set aside sale on the ground of shortness of deposit, if an order on a question of title—Appeal if lies—Poundage fee if must be deposited by judgment debtor to have sale set aside* The decision of the Full Bench in *Kali Mondal* v *Ramsarbasua Chuckerburty I L R 32 Calc 957, 9 C W N 721,* has not been completely superseded by the explanation subsequently added to s 153 of the Bengal Tenancy Act Where therefore an application under s 174 of the Bengal Tenancy Act to set aside a sale in execution of a decree for rent was rejected by a Munsif who had final jurisdiction in the case under s 153

thereto and was therefore appealable *Semble* The amount to be deposited under s 174 Bengal Tenancy Act does not include poundage fee *Raghubar Dayal* v *Jadunandan Messir, 15 C L J*

BENGAL TENANCY ACT (VIII OF 1885) *contd*

——— s **174**—*concld*

89 16 C W N 736 referred to BENI MADHAB RAY v BISSESSUR BHARTI (1911) **17 C W N 84**

the plaintiffs came into possession of certain *chur* lands as raiyats in 1884 and continuously held possession thereof till 1908 but from 1890 to 1898

1890 to 1898 discussed *Mukandi Lal* v *Crowdy, 8 B L R App 95 Savi* v *Panchnun 25 W R 503 Lal Bahadur* v *Solano I L R 10 Calc 45, Maseyk* v *Bhagabati I L R 18 Calc 121 123,* referred to JASIMUDDIN SHEIKH *v* BENI MADHAB DAS (1913) **17 C W N 881**

1 ——— **Sch III, Art 3**—*Rent sale—Purchase by sole landlord—Suit by tenant to recover possession alleging decree to be fraudulent—Limitation* Where the sole landlord took possession of a holding as purchaser at a sale thereof in execution of a rent decree the tenant was not dispossessed by the landlord within the meaning of Art 3 of Sch III of the Bengal Tenancy Act Dispossession effected by the act of delivery of possession by the Court is not dispossession by the landlord within the meaning of Art 3 of Sch III of the Bengal Tenancy Act *Aminuddin* v *Ulfatunissa Bibi 9 C L J 131* dissented from KAMALDHARI THAKUR v RAMESHUR SINGH BAHADUR (1913) **17 C W N 817**

2 ——— *Suit for possession of land by raiyat or under raiyat—Relationship of landlord and tenant—Special rule of limitation when applies* The plaintiff s suit was for recovery of possession of a holding governed by the Bengal Tenancy Act which had vested in her on the death of her husband The plaintiff s aunt who came to live with her after the death of plaintiff s husband brought the defendants on to the land to assist in its cultivation The defendants by their conduct compelled the plaintiff to leave the holding and take shelter somewhere else In the plaint there was a suggestion of collusion on the part of the plaintiff s landlord *Held* that as between the plaintiff and the defendants there was no relationship of landlord and tenant so that as between them the special law of limitation embodied in Art 3 Sch III of the Bengal Tenancy Act did not apply There having been in fact no dispossession by the landlord the mere suggestion that the landlord had a hand in the ouster did not bring the suit within Art 3 Sch III of the Act BASANTA KUMARY *v* NANDA RAM KAIBARTA DASS (1913) **17 C W N 1149**

——— **Sch III, Art 6**—*Rent suit, instalment decree in, passed by consent—Execution—Limitation*

BENGAL TENANCY ACT (VIII OF 1885)—*concld.*

——— **Sch. III, Art 6**—*concld.*

—*Period, if may be extended by agreement.* Art. 6 of Sch. III of the Bengal Tenancy Act applies to an application to execute a decree passed upon consent, in a suit for rent by the sole landlord against his tenant, directing payment by instalments. Limitation therefore ran from the date of the decree and not from the date of payment of the last or any other instalment. *Baikuntha Nath* v. *Aghore Nath, I. L. R. 21 Calc. 387, Thakamoni* v. *Mohendra Nath, 10 C. L. J. 463, K. B. Dutt* v. *Gosto Behary, 16 C. L. J. 379 : 16 C. W. N. 1006,* referred to. The parties to a suit cannot contract themselves out of the law of limitation and extend the period prescribed thereby. *Kristo Kamal* v. *Hurree Sardar, 13 W. R. F. B. 44, Lalla Ram Sahay* v. *Dodraj Mahto, 20 W. R. 395, Nabar Narrya* v. *Dhan Mahomed, I. L. R. 5 Calc. 820 : 6 C. L. R. 136,* referred to. KHETRO MOHAN CHATTERJEE *v.* MOHIM CHANDRA DAS (1913) . **17 C. W. N. 518**

BEQUEST.

See HINDU LAW—ADOPTION.
I. L. R. 37 Bom. 107

——— **conditions of—**

See WILL . **I. L. R. 40 Calc. 192**

BETROTHAL.

See HINDU LAW—WILL
I. L. R. 37 Bom. 18

BHAGDARI VILLAGE.

——— *Lands forming part of road-ways in village—Ownership of Government—Bhagdar has no right to tether cattle on such lands.* The plaintiff, a *bhaghdar,* owned a house in a village which was *bhagdari.* In front of his house lay a peice of open ground, which was part of a way or lane, leading directly from the main public road to the collection of houses situate round about the plaintiff's house. It was open to the villagers and used by them freely upon all occasions. The plaintiff claimed a right to tether his cattle upon the land in question: *Held,* that the land in question, forming a portion of a public road-way, was the property of Government. UMAR AMANJI *v.* SECRETARY OF STATE FOR INDIA (1912).
I. L. R. 37 Bom. 87

BHANG.

See WADHWAN CIVIL STATION.
I. L. R. 37 Bom. 152

BHARWAD.

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), s. 2.
I. L. R. 37 Bom. 398

BOMBAY ÁBKÁRI ACT (BOM. V OF 1878).

See ABKARI ACT, BOMBAY.

BOMBAY ACTS.

——— **1863—VI.**

See PUBLIC CONVEYANCES ACT.

——— **1869—XIV.**

See BOMBAY CIVIL COURTS ACT.

——— **1874—III.**

See HEREDITARY OFFICES ACT.

——— **1876—X.**

See REVENUE JURISDICTION ACT.

——— **1878—V.**

See ABKARI ACT, BOMBAY.

——— **1879—V.**

See LAND REVENUE CODE, BOMBAY.

——— **1879—XVII.**

See DEKKHAN AGRICULTURISTS' RELIEF ACT .

——— **1880—I.**

See KHOTI SETTLEMENT ACT.

——— **1886—V.**

See HEREDITARY OFFICES AMENDMENT ACT . .

——— **1887—IV.**

See PREVENTION OF GAMBLING ACT.

——— **1888—VI.**

See GUJARAT TALUKDARS ACT.

——— **1901—III.**

See DISTRICT MUNICIPALITIES ACT.

——— **1901—VI.**

See LAND REVENUE CODE, BOMBAY.

——— **1905—I.**

See COURT OF WARDS ACT, BOMBAY.

——— **1906—II.**

See MAMLATDARS' COURTS ACT.

BOMBAY CIVIL COURTS ACT (XIV OF 1869).

——— **s. 32.**

See COURT OF WARDS ACT (BOM. ACT I OF 1905), s. 3 (*c*).
I. L. R. 37 Bom. 313

BOMBAY HIGH COURT (APPELLATE SIDE) RULES.

——— **Rule 65.**

See BOMBAY REGULATION II OF 1827, s. 52 . . **I. L. R. 37 Bom. 303**

BOMBAY PREVENTION OF GAMBLING ACT (BOM. IV OF 1887).

ss. 5, 6 and 7.

See GAMBLING . **I. L. R. 37 Bom. 402**

BOMBAY REGULATION (II OF 1827).

——— s. 52—*Pleaders' Act (I of 1846), ss. 6 and 7—Bombay High Court Appellate Side Rules, Rule 65—Pleaders' fees—Taxation—Appeal from a preliminary decree deciding status of agriculturist—Practice.* The pleaders' fees in the High Court, in an appeal from a preliminary decree determining the status of an agriculturist, must be assessed at Rs 30 under Rule 65 of the Bombay High Court Appellate Side Rules, and not on the subject matter in dispute, under s. 52 of the Bombay Regulation II of 1827 or under s 6 of Act I of 1846 MANOHAR RAMCHANDRA *v* THE COLLECTOR OF THE NASIK DISTRICT (1912)
I. L. R. 37 Bom. 303

——— s 56—*Pleader—Misbehaviour—Not limited to professional misconduct—High Court—Disciplinary jurisdiction* The term "misbehaviour" in s 56 of the Bombay Regulation II of 1827 is not restricted to misbehaviour in the strict course of a pleaders' professional duties, but includes general misbehaviour There is no reason to suppose that the Legislature intended in this matter to enact a laxer rule of practice in India than the rule which prevails in England GOVERNMENT PLEADER, BOMBAY *v* ANNAJI NARAYAN DESHPANDE (1912)
I. L. R 37 Bom. 354

BOMBAY REGULATION (V OF 1827).

——— s. 1.

See LIMITATION I. L. R. 37 Bom. 231

BONÂ FIDE ACT.

——— by Collector—

See ABKARI ACT (BOM. ACT V OF 1878), ss 32, 67 I. L. R 37 Bom. 101

BOND.

See LIMITATION ACT (IX OF 1908), SCH I, ART. 75 . I. L. R 35 All. 455

BOOKS OF REFERENCE.

——— *Reliance by Court on Books of Reference—Parties should know of it at the trial—Practice.* Whenever a Court relies on a book of reference, such as a work on medical jurisprudence, it should be made known at the trial to the parties, so that they may have an opportunity of adducing evidence or argument on the point. *Durga Prasad Singh* v. *Ram Doyal Chaudhuri, I. L. R. 38 Calc. 153*, referred to WESTON AND OTHERS *v.* PEARY MOHAN DASS (1912) . . I. L. R 40 Calc. 898

BOUGHT AND SOLD NOTES.

See ARBITRATION I. L. R. 40 Calc. 219

BREACH OF CONTRACT OF MARRIAGE.

See HINDU LAW—WILL.
I. L. R. 37 Bom. 18

BRITISH INDIA.

See WADHWAN CIVIL STATION
I. L. R. 37 Bom. 152

BUILDING PLANS.

——— sanction of—

See MUNICIPAL CORPORATION.
I. L R. 40 Calc. 836

BURDEN OF PROOF.

See CIVIL PROCEDURE CODE (1908), s. 60(*c*) . I L. R. 35 All. 307

See ONUS OF PROOF.

See HINDU LAW—ALIENATION.
I. L. R 40 Calc 288

BURMA TOWN AND VILLAGE LANDS ACT (BURMA IV OF 1898)

——— s. 41 (*b*).

See JURISDICTION OF CIVIL COURT
I. L. R. 40 Calc. 391

C

CALCUTTA MUNICIPAL ACT (BENG. III OF 1899)

——— ss. 3 (*32*), 408, 574, 575—*Bustee land—Debutter property—Shebait not in possession if an "owner"* When the petitioner, being one of several *shebaits* who had his last turn of worship in 1906 and had since then no hand in the management of the *debutter* properties, was convicted under s $\frac{474}{408}$ of the Calcutta Municipal Act for non compliance with a notice under s 408 calling upon him to carry out certain improvements in a bustee which was one of the *debutter* properties: *Held*, that the petitioner was not an owner within the meaning of s 3, sub s (*32*) of the Act inasmuch as though he might be regarded as a manager for the deity, yet he was not receiving the rent. RATNENDRA LAL MITTER *v* CORPORATION OF CALCUTTA (1913) . . 17 C W. N. 1084

——— ss 3 (35) 361, 416 (1) (5) 418—

create public right of way—Criminal Procedure Code (Act V of 1898), s 439—Order of acquittal, revision of A roadway less than 20 ft. wide was originally made as part of a *bustee* and in accordance with the standard plan approved by the General Committee. The owner of the *bustee* sold the land covered by the *bustee* to various persons who built residences on the land At the instance of the Chairman of the Corporation, the opposite party whose house abutted on the roadway was prosecuted for failure to comply with a direction under s. 361 of the Act to improve the roadway The Magistrate found that the public exercised a right of way over the road and acquitted the accused,

CALCUTTA MUNICIPAL ACT (BENG. III OF 1899)—*concld.*

——— s. 3—*concld.*

There was no agreement between the General Committee and the owner as to the road being made public. *Held*, that the roadway in question was a private street to which s. 361 of the Calcutta Municipal Act applied. That the definition of the word "street" in the Act includes a passage and the fact that the roadway was not 20 feet wide did not make s. 361 inapplicable. That the meaning of s. 416 read with s. 419 is that a street like the one in question remains a private street until the owner of the *bustee* initiates a proceeding under s. 419. That in order to create a public right of way over a road there must be a dedication by the owner and in the present case under s. 416 (*1*) the owner could not dedicate without the consent of the General Committee. That the Chairman of the Corporation was competent to initiate the prosecution. CORPORATION OF CALCUTTA *v.* MAHAMAYA DEBI (1913).
17 C. W. N. 1250

——— **ss. 375, 377.**

See MUNICIPAL CORPORATION.
I. L. R. 40 Calc. 836

CALCUTTA POLICE ACT (BENG. IV OF 1866).

——— **ss. 62A (*4*), 102A.**

See PROCESSION **I. L. R. 40 Calc. 470**

CALCUTTA SUBURBAN POLICE ACT (BENG. II OF 1866).

——— **ss. 39A (*1*), 49A.**

See PROCESSION . **I. L. R. 40 Calc. 470**

CANDIDATE.

See PLEADERSHIP EXAMINATION.
I. L. R. 40 Calc. 588

CARRIERS.

See CARRIERS ACT.

——— *Carriers Act (III of 1865), ss. 6, 7, 8, 9—Liability of steamer company for goods damaged in transit—Onus of proof—Negligence or criminal act of company, its servant, or agent presumed.* Where a steamer company forwarded a consignment of four tins of oil on terms contained in what is known as an owner's risk-note, after receiving the tins in good condition, and the consignee refused to take delivery as one tin was cut open and partly empty and another was quite empty, and brought a suit for the value of the oil. *Held*, that the steamer company, being a common carrier, was in a different position from railway companies who are only bailees, coming under ss. 151, 152 and 161 of the Contract Act. Its liability is, therefore, that of an insurer subject to certain exceptions under s. 6 of the Carriers Act. *Held*, also, that the onus was, as a matter of course, on the steamer company as common carriers, even in a case covered by special contract

CARRIERS—*concld.*

to disprove negligence, as the loss of the goods is *prima facie* evidence of negligence or criminal act of the carrier, his servants or agents. *Choutmul Doogur* v. *The Rivers Steam Navigation Co., I. L. R. 21 Calc. 786*, followed. *Irrawaddy Flotilla Co.* v. *Bugwandas, I. L. R. 18 Calc. 620, Lalchand Sew Karan* v. *E. I. Ry. Co., 17 C. W. N. 635n*, referred to. *Sheobarut Ram* v. *B. and N.-W. Ry. Co., 16 C. W. N. 766*, not followed. INDIA GENERAL STEAM NAVIGATION COMPANY *v.* BHAGWAN CHANDRA PAL (1913) . . . **I. L. R. 40 Calc. 716**

CARRIERS ACT (III OF 1865).

——— **ss. 3, 4, 8, 9**—*Mutka silk of over Rs. 100 in value sent by steamer—Loss owing to negligence—Merchandise sent as "luggage" and value and description not declared and excess charge not paid—Carrier if liable in damages.* Where goods of the description contained in the schedule referred to in s. 3 of the Carriers Act and exceeding in value Rs. 100 were lost owing to the negligence of a steamer company: *Held*, that the steamer company were liable under s. 8 of the Act to make compensation to the consignor, although the value and description of the goods were not declared under s. 3 of the Act and the increased risk of carrying them was not paid for at higher rates under s. 4 of the Act. *Velayat Hossein* v. *Bengal and North-Western Railway Co., I. L. R. 36 Calc. 819*, referred to. The steamer company were liable although the goods were delivered as "luggage," as the Act makes no distinction between "personal luggage" and goods or merchandise. *Shaik Roheemulla* v. *Palmer, Coryton's Rep. 133*, not followed. Under s. 9 of the Carriers Act the onus of proving negligence is not on the plaintiff. *Sheobarut Ram* v. *The Bengal North-Western Railway Co., 16 C. W. N. 766*, distinguished. INDIA GENERAL NAVIGATION AND RY. CO., LD., *v.* GOPAL CHANDRA GUIN (1913).
17 C. W. N. 970

——— **ss. 6 to 9.**

See CARRIERS . **I. L. R. 40 Calc. 716**

——— **s. 9.**

See RAILWAY. . **I. L. R. 37 Bom. 1**

CAUSE OF ACTION.

——— **s. 34.**

See AGRA TENANCY ACT (II OF 1901), s. 34 . . **I. L. R. 35 All. 512**

——— **abatement of—**

See PARTIES—RELIGIOUS ENDOWMENT.
I. L. R. 40 Calc. 323

CENTRAL PROVINCES GOVERNMENT WARDS ACT (XVII OF 1885).

——— **s. 18**—*Application of Act—Hindu joint family estates—Application by managing members of joint family for superintendence of estate by Court of Wards—Mitakshara law, family governed by—Sanction by Chief Commissioner to mortgage of estate under charge of Court of Wards—Suit on*

CENTRAL PROVINCES GOVERNMENT WARDS ACT (XVII OF 1885) —contd

——— s 18—*contd*

mortgage after relinquishment by Court of Wards The Central Provinces Government Wards Act (XVII of 1885) applies to the superintendence by the Court of Wards of the estates of Hindu joint families, as well as to the separate estates of Hindus and others situate within the territories administered by the Chief Commissioner of the Central Provinces The two managing members of a Hindu joint family governed by the Mitakshara law, and zamindars of the family estate of Baherakhedi in Hosangabad, which had become over

ber had in the property any definite undivided share [*Garibullah* v *Khalak Singh, I L R 25 All 407 L R 30 I A 165*, and *Appovier* v *Rama Subba Aiyan, 11 Moo I A 75*] what was taken over by the Court of Wards on assuming superin

assumed, bound *the interest of all the members* The sanction of the Chief Commissioner to a mortgage of such property as required by s 18 of Act XVII of 1885 may be an implied sanction

family estate the mortgage money (Rs 1,20 000 was repayable with interest by annual instalments of Rs 10,000 extending over more than 20 years, and in the event of Rs 30 000 becoming overdue, the Court of Wards covenanted to recover such sum by sale or otherwise of sufficient of the mortgaged property If it was found impossible to continue to manage the estate, the Court of Wards was either to sell up the entire property and devote the proceeds to the liquidation of the debt, or make over the estate to the mortgagees in satisfaction of their claim In the event of the *management being relinquished before the debt* was liquidated in the ordinary course, the Court of Wards was to liquidate the debt remaining due by the sale of such portion of the property as might be necessary The sum borrowed was applied to pay off the debts on the property

CENTRAL PROVINCES GOVERNMENT WARDS ACT (XVII OF 1885) —concld

——— s 18—*concld*

Only Rs 16,000 was repaid up to 1893, and since then no instalment had been paid, the Court of

quishment by it of the management had been *sanctioned offered to make over to them the* mortgaged property in satisfaction of their claim excepting the cultivating rights of *sir* land which are to be reserved for the maintenance of the wards,' which the mortgagees declined as not being a compliance with the terms of the mortgage deed *In June, 1902 the Court of Wards* relinquished the management of the estate with

mortgage had become due on the relinquishment of the management by the Court of Wards and the usual decree for sale was made GULAB SINGH *v* GOKULDAS (1913) **I L R 40 Calc 784**

CENTRAL PROVINCES LAND REVENUE ACT (XVIII OF 1881)

——— ss **136G, 136H**—*Appeal if lies to High Court against decision of Commissioner on appeal—Deputy Commissioner, if a District Court* There is no appeal to the Commissioner against the decision of a Deputy Commissioner passed under s 136G of the C P Land Revenue Act and no appeal lies to the High Court against an order of a Commissioner passed on appeal against such decision of a Deputy Commissioner GAJRAJ DAS *v* KRIPASINDHU DAS (1912) **17 C W. N. 155**

CENTRAL PROVINCES TENANCY ACT (XI OF 1898)

——— ss **46, 47, 95**—*Unauthorised transfer by an occupancy tenant—S 47 if the only provision for avoiding such transfer—Jurisdiction of Civil Court—Effect of s 95* Where an occupancy tenant governed by the Central Provinces Tenancy Act, sold half of the share of his holding to the defendant and subsequently mortgaged the other half to another person with possession and the plaintiff landlord applied to the Revenue Officer under s 47 of the Act for possession of the land

same relie
that havir
could not

CENTRAL PROVINCES TENANCY ACT (XI OF 1898)—*concld.*

——— s. 46—*concld.*

same relief. S. 47 enacts the only method by which a transfer made by an occupancy tenant in contravention of s. 46 of the Act may be avoided. *Icharam Sing* v. *Nilmony Bahida, 7 C. L. J. 499,* followed. Under s. 95 the jurisdiction of the Civil Court is excepted in the case of ss. 46 and 47. BAIKANTHA NATH MISRA *v.* LABOO NAG (1912) . . . . . **17 C. W. N. 621**

CERTIFICATE.

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 182, CL. (5).
I. L. R. 37 Bom. 559

CERTIFICATE OF COLLECTOR.

See PENSIONS ACT (XXIII OF 1871), s. 4.
I. L. R. 37 Bom. 91

CERTIFICATE OF INCORPORATION.

See COMPANIES ACT (VI OF 1882), ss. 6, 40, 41 . . **I. L. R. 40 Calc. 1**

CERTIFICATE OF SUCCESSION.

See SUCCESSION CERTIFICATE.

See SUCCESSION CERTIFICATE ACT.

CERTIORARI, WRIT OF.

——— *Power of High Court to issue—Income-tax Act (II of 1886)—Criminal Procedure Code (Act V of 1898), s. 476, when order may be passed under.* (i) *Per* SUNDARA AYYAR, *J.*—The High Court has no jurisdiction to issue a writ of *certiorari* on an officer beyond the limits of its jurisdiction. *Per* SADASIVA AYYAR, *J.*—The High Court has such jurisdiction. *Per* CURIAM. (ii) A Divisional Officer hearing appeals under the Income-tax Act (II of 1886) is a Court. (iii) Presuming the High Court to have jurisdiction, a petition may be entertained by the High Court to set aside the order of such Court passed under s. 476 of the Criminal Procedure Code (Act V of 1898), it not being necessary for the petitioner to have appealed to the Revenue Board. (iv) The Divisional Officer's order under s. 476, Criminal Procedure Code, was not bad for want of jurisdiction as being passed long after the close of the income-tax proceedings. (v) Even assuming that the order is bad for want of jurisdiction and that the High Court has itself jurisdiction to proceed by way of *certiorari,* the High Court is not bound to interfere and quash the proceedings if on the merits petitioner has no case. Petition dismissed. *In re* NATARAJA IYER (1913) . . . . . **I. L. R. 36 Mad. 72**

CESS.

See LANDLORD AND TENANT.
I. L. R. 35 All. 19

CHAIRMAN.

See MUNICIPAL CORPORATION.
I. L. R. 40 Calc. 886

CHANGE OF ATTORNEY.

See ATTORNEY AND CLIENT.
I. L. R. 40 Calc. 386

CHARGE.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 250.
I. L. R. 37 Bom. 376

See INTEREST . **I. L. R. 40 Calc. 514**

See LIMITATION ACT (IX OF 1908), SCH. 1, ART. 132 . **I. L. R. 35 All. 185**

See TRANSFER OF PROPERTY ACT (IV OF 1882), ss. 59, 100.
I. L. R. 35 All. 164

1. ——— *Omission to frame charge—Rioting—Causing hurt—Conviction for an offence other than the one charged with—Error of law—" Error, omission or irregularity "—Criminal Procedure Code (V of 1898), ss. 535, 537 (a)—Practice.* Ss. 535 and 537 (*a*) of the Criminal Procedure do not apply to a case where the accused is charged with one offence and convicted of another —totally different to the one he was charged with. S. 233 is mandatory for every distinct offence of which any person is accused there shall be a separate charge, and every charge shall be tried separately, except in the case mentioned in ss. 234, 235, 236 and 239 of the Code. S. 236 refers to a series of acts which are of such a nature that it is doubtful which of the several offences the facts constitute. To convict an accused of murder on a charge of rioting or to commit him to the Sessions without framing a charge, would be not merely an irregularity but an error of law vitiating the trial. SITA AHIR *v.* EMPEROR (1912) . . . . **I. L. R. 40 Calc. 168**

2. ——— *Misjoinder of charges —Joint trial on charges of criminal breach of trust and falsification of accounts committed in separate transactions—Criminal Procedure Code (Act V of 1898), ss. 233, 234, and 235—Penal Code (Act XLV of 1860), ss. 408 and 477A.* A charge of criminal breach of trust of a sum of money can be tried under s. 235 (*1*) of the Criminal Procedure Code, at the same time, with one of falsification of accounts made to conceal the act of misappropriation as part of the same transaction and two unconnected charges of falsification may be tried at one trial under s. 234, but a charge of criminal breach of trust cannot be legally tried together with one of falsification relating to a distinct act of misappropriation committed in a separate transaction. *Kasi Viswanathan* v. *Emperor, I. L. R. 30 Mad. 328 ;* and *Subrahmania Ayyar* v. *King-Emperor, I. L. R. 25 Mad. 61 ; L. R. 28 I. A. 257,* followed. EMPEROR *v.* JIBAN KRISTO BAGCHI (1912) . **I. L. R. 40 Calc. 318**

3. ——— *One head of charge relating to several distinct offences—Misjoinder—Illegality of trial—Criminal Procedure Code (Act V of 1898), s. 233.* A single charge relating to several distinct offences is illegal. Under s. 233 of the Criminal Procedure Code there should be a separate head of charge for each such offence. A charge,

CHARGE—*concld.*

under s 469 of the Penal Code, of criminal breach of trust in respect of a total sum of 10 annas 6 pies, to wit, a sum of 4 annas 6 pies collected from A between certain dates in one year and a sum of 6 annas collected from B between other dates in the same year, is bad for misjoinder; and a trial held on such a charge is illegal *Subrahmania Ayyar* v. *King Emperor, I. L. R. 25 Mad. 61,* followed. Asgar Ali Biswas v Emperor (1913)
I. L. R 40 Calc. 846

4. ——————— *Government Revenue, due on land—Common Burden—Payment by one sharer—Right to claim charge on other shares—No right to a personal decree.* When several shares in the same land or when several lands are liable under a common burden (such as, Government revenue, as in the present case), the discharge of the whole burden by the owner of a distinct share or a distinct land would give him a charge on the remaining shares or lands for the proportionate sums they were equitably liable. But the common burden being only on the land or lands and not recoverable from the sharers personally, there can only be a charge and no personal decree *Raja of Vizianagram* v. *Raja Setrucherla Somasekhararaz, I L. R. 26 Mad. 686,* followed *Alayakammal* v *Subbaraya Gounden, I L R 28 Mad 493,* and *Parbhu Narain Singh* v *Babu Beni Singh, 14 C W N 361,* referred to. *Subramania Chetty* v *Mahalinghasami Sivan, I L. R 33 Mad 41* distinguished Amman Pariyayi v Pakran Haji (1913) . . . **I. L. R. 36 Mad 493**

CHARGE TO JURY.

See Jury, trial by
I. L. R. 40 Calc. 367

CHARGES OF MISCONDUCT

——— **by Counsel** –

See Instructions to Counsel
I. L. R. 40 Calc. 898

CHARITABLE BEQUEST.

See Will . **I. L. R. 40 Calc. 192**

CHARITY.

See Civil Procedure Code (Act V of 1908), s 92 . **I L. R. 37 Bom. 95**

CHOTA NAGPUR ENCUMBERED ESTATES ACT (BENG. VI OF 1876).

Nagpur Encumbered Estates Act has no application to land outside Chotanagpur and a vesting order under Chap II of the Act can only be made in respect of land lying within that area The privilege enjoyed by a mortgagee from the proprietor in respect of land outside Chota Nagpur to enforce his rights in a Court of ordinary civil jurisdiction, has not been abrogated or struck at

CHOTA NAGPUR ENCUMBERED ESTATES ACT (BENG. VI OF 1876)—*concld.*

——— **s. 2**—*concld.*

by any of the provisions of the statute. *Ajodhya Nath Chowdhury* v *Keshub Chunder Mukherjee, 11 C W. N 1127,* followed and explained. Bhicha Ram Sahi v. Bishambhar Nath Sahi (1912)
17 C. W. N. 754

CHOTA NAGPUR LANDLORD AND TENANT PROCEDURE ACT (BENG I OF 1879)

——— **s. 123.**

See Execution of Decree
I. L. R. 40 Calc. 623

CHOTA NAGPUR TENANCY ACT (BENG. VI OF 1908).

——— **ss. 3 (xi), 81 (n), 91**—*Forest produce, if includes unworked coal—Suit to eject jaigirdar for breach of covenant—Minerals, right to—Status of tenant, question arising incidentally—Procedure, proper, when suit instituted to which s 91 applies—Stay of suit—Receiver and injunction—Reliefs, if available under s 91—Presumption against taking away Court's jurisdiction* Whether any right referred to in cl (n) of s 81 of the Chota-nagpur Tenancy Act is in issue or not in a suit or application instituted by the plaintiff so as to make the provisions of cl (a) to s 91, sub s (1) of the Act applicable, cannot be determined before written statement has been filed by the defendant Cl (n) of s 81 does not include coal in a mine not yet opened Forest produce defined in sub cl (e) of cl (xi) of s 3 of the Act obviously refers to minerals lying on the surface of the soil which may be taken by any person tenant or not Cl (b) of s 91 sub s (1), does not apply to a suit where the question of the tenant's status arises only indirectly for consideration A suit by the zemindar for recovery of possession of land from a jaigirdar, in which a point arises as to which of the parties is entitled to the underground rights, is not a suit for the determination of a tenant's status within cl. (b) of s 91, sub s (1) Where s 91 applies, the Court should not dismiss the suit but should adjourn the trial till the final publication *of the record of rights. Under the proviso to* sub s (1) of s 91 of the Act, the plaintiff cannot demand a prohibition of waste or damage but merely the prohibition of the continuance of waste or damage already committed, nor can relief be granted under it by the appointment of a receiver or the issue of a temporary injunction Every presumption shall be made in favour of the jurisdiction of a Civil Court and it shall not be taken away except by express words or by necessary implication. Ram Narain Singh v. Lachmi Narain Deo (1912) . **17 C. W. N. 408**

——— **ss. 4 (3), 41**

See Ejectment . **I. L. R. 40 Calc. 858**

CHOTA NAGPUR TENANCY ACT (BENG. VI OF 1908)—*concld.*

——— s. 26—*Agreement to pay enhanced rent made when Act X of 1859 in force—Occupancy raiyat if may object to agreement on extension of Beng. Act VI of 1908—Beng. Act I of 1879, s. 21, if affects question.* S. 17 of Act X of 1859 was no bar to the enhancement of the rent of an occupancy raiyat by agreement. Where Beng. Act VI of 1908 was extended to an area (Manbhum) where previously Act X of 1859 and not Beng. Act I of 1879 applied: *Held*, that s. 26 of Beng. Act VI of 1908 did not invalidate an agreement to pay enhanced rent validly made when Act X of 1859 was in force. SAJOR MAHTO v. S. P. COOKE (1912) . **17 C. W. N. 430**

——— s. 27.

See HIGH COURT, JURISDICTION OF. **I. L. R. 40 Calc. 518**

——— s. 47.

See MORTGAGE . **I. L. R. 40 Calc. 534**

——— ss. 59, 79.—*Mokarari tenure, stipulation in, for ejectment on non-payment of rent, if enforcible.* A stipulation in a lease creating a permanent tenure to the effect that the lease shall be cancelled in case of non-payment of rent, is not a void stipulation under the provisions of the Chota Nagpur Tenancy Act. The liability to ejectment of the holder of a *mokarari istimrari ijara* is to be determined by the conditions of his lease, neither s. 59 nor s. 79 of the Act applying to permanent tenures. NAYAN SINGH v. AJIT LAL OHDAR (1913) . . . **17 C. W. N. 1068**

——— s. 139 (3), cl. (*a*).

See JURISDICTION OF CIVIL COURT. **R. 40 Calc. 402**

——— s. 208.

See EXECUTI[illegible]

CHURCH.

ship for sixty years, p[illegible] Right to manage—U[illegible] may be invoked—C[illegible] [illegible]pudiation by o[illegible] Removal, amen[illegible] [illegible]her litigation [illegible]), s. 30—D[illegible] nt others [illegible]n Act [illegible] one [illegible] used, [illegible]

CHURCH—*concld.*

management of a particular Roman Catholic Church, and its properties, besides usuage, other things, such as the rights of ecclesiastical authorities according to the canon law can be looked to, though in some churches on the West Coast, parishioners have more or less control over the management of the properties. A single trustee is not entitled to recover possession of the properties appertaining to the trust from another trustee by evicting him though he may be entitled to maintain a suit in ejectment against a stranger on behalf of the trust. Even if the defendants or some of them were once entitled to be trustees along with the Vicar: *Held*, that they by their secession from the Catholic Church and by their repudiation of the trusts of the institution which in law works a forfeiture of their office, disentitled themselves to hold the office of trustee and that they had in law no answer to a suit for their moval. *Marian Pillai* v. *Bishop of Mylapore, I. L. R. 17 Mad. 447*, followed. Even if they offered to return to their allegiance to the Romish Church, it would not be possible to accept their recantation to the extent of holding them to be fit to hold the responsible office of trustee. Even if the plaintiff had not asked for the removal of the defendants, an amendment to that effect can be allowed in order to avoid future litigation and in the interests of the trust. A plaintiff may be allowed to sue certain defendants under s. 30, Civil Procedure Code (Act XIV of 1882), as representing certain others in spite of the objection or refusal of the defendants on record to represent the others, the consent of the defendants on record not being necessary. *In re Andrews* v. *Salmon (1888), W. N. 102*, followed. Where a defendant claims to hold certain properties as a trustee and not as his own, there is no period of limitation within which a suit must be brought to recover them on behalf of the trust: Limitation Act (IX of 1908), s. 10. The right to the properties of the trust must go with the right to the office of trustee. *Gnanasambanda Pandara Sannadhi* v. *Velu Pandaram, I. L. R. 23 Mad. 271*, and *Gossami Sri [illegible]idharji* v. *Romanlalji Gossami, I. L. R. 17 Calc.* [illegible]ollowed. The fact that the entire income of [illegible] properties [illegible]as always been utilised for a [illegible] is very [illegible] evidence that the properties [illegible] to it. [illegible] of endowment is necessary [illegible] a ded[illegible] certain properties in favour [illegible] 57 of Evidence Act the [illegible] evidence only of what [illegible]rious facts of public his[illegible]ters though 75 years old [illegible] proof, as proof of where [illegible] living or when they [illegible] *tenth edition, volume II,* [illegible] *re on Evidence, volume* [illegible] AMBALAM PAKKIYA [illegible] **I. L. R. 36 Mad. 418**

[illegible]AL TRIALS.

PROOF.

[illegible] R. 40 Calc. 898

IVIL COURT

See Civil Procedure Code (Act V of 1908) s 68 O XXI r 100
I L R 37 Bom 488

IVIL AND REVENUE COURTS

See Agra Tenancy Act (II of 1901) s 95 **I L R 35 All 14**

——— jurisdiction of—

See Agra Tenancy Act (II of 1901) s 199 **I L R 35 All 521**

See U P Land Revenue Act (III of 1901) s 191 **I L R 35 All. 541**

——— *Jurisdiction—Occupancy olding—Usufructuary mortgage—Ejectment of ortgagee—Suit by mortgagee for declaration that urrender was not binding on him* An occupancy nant who had made usufructuary mortgage of is holding then proceeded to surrender the hold ig to the zamindar who had the mortgagee ejected y the Revenue court *Held* on suit by the iortgagee for a declaration that the surrender of is holding by the mortgagor was not binding on im that no such suit would lie in the face of the jectment proceedings in the Revenue Court which ere binding on the parties *Ram Devi Kuari* v *indesri Upadhya 8 All L J 940* followed Shiva rakash v Karna (1913) **I L R 35 All. 464**

IVIL COURTS ACT (XII OF 1887)

——— [ss 21 (?) (4) and 22 (1)

See Sanction for Prosecution
I L R 40 Calc 37

IVIL COURTS ACT, BOMBAY (Bom XIV OF 1869)

——— s 32

See Court of Wards Act (Bom Act I of 1905) s 3 (c)
I L R 37 Bom 313

IVIL PROCEDURE CODE (ACT XIV OF 1882)

See Limitation Act (XV of 1877) Arts 178 179 **I L R 36 Mad. 553**

——— s 13

See Companies Act 1882 ss 6 40 41
I L R 40 Calc 1

See Enhancement of Rent
I L R 40 Calc 29

——— s 30

See Church **I L R 36 Mad 418**

——— *Right to a village pathway—Distinction between a public highway and village road* There is a distinction between a ublic highway and a village road and a suit under 30 Civil Procedure Code 1882 is maintainable hen a right to a village pathway is the subject matter of litigation even in the absence of special damage *Churi Lal* v *Ram Kishen Shahu*

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd*

——— s 30—*concld*

I L R 15 Calc 460 referred to Kali Charan Naskar v Ram Kumar Sardar (1912)
17 C W N 73

——— s 43

See Partition **I L R 36 Mad. 151**

——— s 53—*Plaint if may be returned for amendment after issues framed* The mere fact that issues have been framed does not stand in the way of the return of the plaint by the Court for amendment under s 53 of the Civil Procedure Code (Act XIV of 1882) *Port Canning and Local Improvement Co* v *Dharanidhar 9 C W N 608*, *Baroda Prosad* v *Girija Nath 2 C L J 11* referred to *Ganga Sahai* v *Mahamad Ali I L R 20 All 444n* followed Sasi Bhusan Das v Rasik Lal Ray (1912) **17 C W N 989**

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aside an *ex parte* decree is dismissed *for default*, it does not bar a suit by the applicant *to set aside* the decree for fraud or other valid reason Bal Kesen Lal v Tapesur Singh (1911)
17 C W N 219

——— s 223

See Limitation Act (IX of 1908) Sch I, Art 128 **I L R 35 All 389**

——— s 231 *O XXI r 15 Civil Procedure Code (Act V of 1908)—Execution application by one only of the decree holders maintainability of—Civil Procedure Code (Act V of 1908), O XXI r 2—Uncertified adjustment not recognizable by Court executing the decree—Judgment debtor s counter petition equivalent to application if within time* Under s 258 Civil Procedure Code (Act XIV of 1882) corresponding to O XXI r 2 of Civil Procedure Code (Act V of 1908) a payment or adjustment of a decree cannot be recognized by any Court executing the decree unless the same has been certified in the manner allowed by law The clause is applicable where in answer to an application for execution an adjustment is set up by the judgment debtor *Gadadhar Panda* v *Shyam Churn Naik 12 C W N 485* referred to Though a judgment holder s counter petition may be treated as an application to certify the same cannot be allowed in the absence of any fraud if it is made beyond 90 days of the adjustment *Ganapathy Ayyar* v *Chenga Reddi I L R 29 Mad 312 Veerappa Chettiar* v *Armugam Poosari 17 Mad L J 527* and *Perialambi Udayan* v *Vellayya Gounden I L R 21 Mad 409* followed *Ramayyar* v *Ramayyar, I L R 21 Mad 356* distinguished and commented on *Gadadhara Panda* v *Shyam Churn Naik 12 C W N 485* distinguished Heaton J s judgment in *Trimback* v *Hari Laxman 12 Bom L R 686* not followed Under s 236 Civil Procedure Code (Act XIV of 1882) corresponding to O XXI r 15 Civil Procedure

CHOTA NAGPUR TENANCY ACT (BENG. VI OF 1908)—*concld.*

——— s. 26—*Agreement to pay enhanced rent made when Act X of 1859 in force—Occupancy raiyat if may object to agreement on extension of Beng. Act VI of 1908—Beng. Act I of 1879, s. 21, if affects question.* S. 17 of Act X of 1859 was no bar to the enhancement of the rent of an occupancy raiyat by agreement. Where Beng. Act VI of 1908 was extended to an area (Manbhum) where previously Act X of 1859 and not Beng. Act I of 1879 applied: *Held*, that s. 26 of Beng. Act VI of 1908 did not invalidate an agreement to pay enhanced rent validly made when Act X of 1859 was in force. SAJOR MAHTO *v.* S. P. COOKE (1912) . **17 C. W. N. 430**

——— **s. 27.**

See HIGH COURT, JURISDICTION OF. **I. L. R. 40 Calc. 518**

——— **s. 47.**

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——— **ss. 59, 79.**—*Mokarari tenure, stipulation in, for ejectment on non-payment of rent, if enforcible.* A stipulation in a lease creating a permanent tenure to the effect that the lease shall be cancelled in case of non-payment of rent, is not a void stipulation under the provisions of the Chota Nagpur Tenancy Act. The liability to ejectment of the holder of a *mokarari istimrari ijara* is to be determined by the conditions of his lease, neither s. 59 nor s. 79 of the Act applying to permanent tenures. NAYAN SINGH *v.* AJIT LAL OHDAR (1913) . . . **17 C. W. N. 1068**

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See JURISDICTION OF CIVIL COURT. **I. L. R. 40 Calc. 402**

——— **s. 208.**

See EXECUTION OF DECREE. **I. L. R. 40 Calc. 623**

CHURCH.

——— *Prevailing form of worship for sixty years, primâ facie the original form—Right to manage—Usage alone not the test—Canon law may be invoked—One trustee cannot eject another—Repudiation by one trustee, good ground for his removal—Removal, amendment of plaint for, allowed, to avoid further litigation—Civil Procedure Code (Act XIV of 1882), s. 30—Defendants on record objecting to represent others—Jurisdiction of Court to allow—Limitation Act (IX of 1908), s. 10—No limitation against one holding properties as trustee—Whole income used, evidence of dedication of lands—Evidence Act (I of 1872), s. 57—Only proof of notorious facts of public history dispensed with.* When it is found that for a period of more than sixty years before the defendants' (parishioners') secession, the Roman Catholic form of worship prevailed in their parish church the onus is undoubtedly on the defendants to establish by satisfactory evidence that the church was Syro-Chaldean at the inception. As to the right of

CHURCH—*concld.*

management of a particular Roman Catholi Church, and its properties, besides usage, othe things, such as the rights of ecclesiastical author ities according to the canon law can be looked to though in some churches on the West Coast, pari shioners have more or less control over the manage ment of the properties. A single trustee is not entitled to recover possession of the propertie appertaining to the trust from another trustee by evicting him though he may be entitled to maintain a suit in ejectment against a stranger on behalf of the trust. Even if the defendants or some of them were once entitled to be trustees along with the Vicar: *Held*, that they by their secession from the Catholic Church and by their repudiation of the trusts of the institution which in law works a forfeiture of their office, disentitled themselves to hold the office of trustee and that they had in law no answer to a suit for their moval. *Marian Pillai* v. *Bishop of Mylapore, I. L. R. 17 Mad. 447*, followed. Even if they offered to return to their allegiance to the Romish Church, it would not be possible to accept their recantation to the extent of holding them to be fit to hold the responsible office of trustee. Even if the plaintiff had not asked for the removal of the defendants, an amendment to that effect can be allowed in order to avoid future litigation and in the interests of the trust. A plaintiff may be allowed to sue certain defendants under s. 30, Civil Procedure Code (Act XIV of 1882), as representing certain others in spite of the objection or refusal of the defendants on record to represent the others, the consent of the defendants on record not being necessary. *In re Andrews* v. *Salmon (1888), W. N. 102*, followed. Where a defendant claims to hold certain properties as a trustee and not as his own, there is no period of limitation within which a suit must be brought to recover them on behalf of the trust: Limitation Act (IX of 1908), s. 10. The right to the properties of the trust must go with the right to the office of trustee. *Gnanasambanda Pandara Sannadhi* v. *Velu Pandaram, I. L. R. 23 Mad. 271*, and *Gossami Sri Gridharji* v. *Romanlalji Gossami, I. L. R. 17 Calc. 3*, followed. The fact that the entire income of certain properties has always been utilised for a church is very good evidence that the properties belong to it. No deed of endowment is necessary to prove a dedication of certain properties in favour of a trust. Under s. 57 of Evidence Act the Court could dispense with evidence only of what may be regarded as notorious facts of public history, and cannot treat letters though 75 years old without any sort of legal proof, as proof of where certain missionaries were living or when they died. *Taylor on Evidence, tenth edition, volume II, paragraph 1785, and Wigmore on Evidence, volume III*, s. 1699, referred to. AMBALAM PAKKIYA UDAYAN *v.* BARTLE (1913) **I. L. R. 36 Mad. 418**

CIVIL AND CRIMINAL TRIALS.

See STANDARD OF PROOF. **I. L. R. 40 Calc. 898**

CIVIL COURT

See Civil Procedure Code (Act V of 1908) s 68 O XXI r 100
I L R 37 Bom 488

CIVIL AND REVENUE COURTS

See Agra Tenancy Act (II of 1901) s 95 **I L R 35 All 14**

——— jurisdiction of—

See Agra Tenancy Act (II of 1901) s 199 **I L R 35 All 521**

See U P Land Revenue Act (III of 1901) s 121 **I L R 35 All 541**

——— *Jurisdiction—Occupancy holding—Usufructuary mortgage—Ejectment of mortgagee—Suit by mortgagee for declaration that surrender was not binding on him* An occupancy tenant who had made usufructuary mortgage of

Prakash v Karna (1913) **I L R 35 All 464**

CIVIL COURTS ACT (XII OF 1887)

——— ss 21 (?) (4) and 22 (1)

See Sanction for Prosecution
I L R 40 Calc 37

CIVIL COURTS ACT, BOMBAY (Bom XIV OF 1869)

——— s 32

See Court of Wards Act (Bom Act I of 1905) s 3 (c)
I L R 37 Bom 313

CIVIL PROCEDURE CODE (ACT XIV OF 1882)

See Limitation Act (XV of 1877) Arts 178 179 **I L R 36 Mad 553**

——— s 13

See Companies Act 1882 ss 6 40 41
I L R 40 Calc 1

See Enhancement of Rent
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——— *Right to a village path a —Distinction between a public highway and*

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CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd*

——— s 30—*concld*

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aside an *ex parte* decree is dismissed for default it does not bar a suit by the applicant to set aside the decree for fraud or other valid reason Bal kesen Lal v Tapesur Singh (1911)
17 C W N 219

——— s 223

See Limitation Act (IX of 1908) Sch I Art 128 **I L R 35 All 389**

——— s 231 *O XXI r 15 Civil Procedure Code (Act V of 1908)—Execution application by one only of the decree holders maintainability of—Civil Procedure Code (Act V of 1908), O XXI r 2—Uncertified adjustment not recognizable by Court executing the decree—Judgment debtor s counter petition equivalent to application if within time* Under s 258 Civil Procedure Code (Act XIV of 1882) corresponding to O XXI r 2 of Civil Procedure Code (Act V of 1908) a payment or adjustment of a decree cannot be recognized by any Court executing the decree unless the same has been certified in the manner allowed by law The clause is applicable where in answer to an application for execution

to certify the same cannot be allowed in the absence of any fraud if it is made beyond 90 days of the adjustment *Ganapathy Ayyar* v *Chenga Reddi I L R 29 Mad 312* *Veerappa Chettiar* v *Armugam Poosari 17 Mad L J 527*, and *Periatambi Udayan* v *Vellayya Gounden I L R 21 Mad 409* followed *Ramayyar* v *Ramayyar I L R 21 Mad 356* distinguished and commented on *Gadadhara Panda* v *Shyam C Naik 12 C W N 485* distinguished Hr *J s* judgment in *Trimbak* v *Hari Laxm Bom L R 656* not followed Under s Civil Procedure Code (Act XIV of 1882) responding to O XXI, r 15 Civil Pr

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— s. 231—*concld.*

Code (Act V of 1908), execution in favour of one only of the several decree-holders cannot be allowed unless there is sufficient cause to do so; when so allowed it is duty of the Court to pass such orders as it deems necessary for protecting the interests of the persons who have not joined in the application. BUDRUDEEN *v.* GULAM MOIDEEN (1913) . . . . I. L. R. 36 Mad. 357

——— s. 238.

See LIMITATION ACT (XV OF 1877), SCH. II, ART. 179 . I. L. R. 37 Bom. 317

——— s. 257A—*Mortgage decree silent as to interest—Petition by judgment-debtor for time wherein he agrees to pay interest—Assent by decree-holder—Court's order granting time, if sanctions agreement to pay interest—Judicial order, construction of—Decree if can be altered by agreement of parties.* Where a mortgage decree contained no provision for interest on the decretal amount from the expiry of the period of grace to the date of realisation, and the decree was made absolute, the mortgaged properties being ordered to be sold in execution thereof, whereupon the judgment-debtor presented a petition, assented to by the decree-holder, asking for time and agreeing to pay interest on the decretal amount at the bond rate till the date of realisation, and the Court passed an order on the petition granting time: *Held,* that the order of the Court granting time must be taken as passed under s. 257A of the Civil Procedure Code of 1882. Judicial orders must be reasonably construed and judicial acts must be presumed to have been regularly performed. *Held,* therefore, that the sanction of the Court covered not merely the prayer for adjournment but also the agreement to pay interest, although this matter was not specifically referred to in the order. *Saroda Prosad* v. *Luchmiput, 10 B. L. R. 214, Bourne v. Gatliff, 11 Cl. & F. 45, 80,* and *Banwari Das* v. *Mahammad Mashiat, I. L. R. 9 All. 702,* referred to. A decree must ordinarily be executed as orginally made and the parties cannot be permitted to make a substantial alteration therein. But where the parties have acted upon the decree as altered for a number of years and treated it as valid, the judgment-debtor, who has substantially benefited thereby, cannot be permitted to take exception to its validity. Parties litigants cannot be allowed to assume inconsistent positions in Court to the detriment of their opponents; where they have elected to adopt a certain course of action, they will be confined to the course they have deliberately adopted. *Dino Nath Sen* v. *Guru Charan Pal, 14 B. L. R. 287; 21 W. R. 310, Ram Ranjan* v. *Jawhuru Juma, 23 W. R. 129, Bhoopendra Nath* v. *Kalee Prasanna, 24 W. R. 205, Heera Lal* v. *Dhunputh Singh, 24 W. R. 282,* referred to. GOKHAI PADHAN *v.* BEHARI LAL PANDIT (1912).

17 C. W. N. 565

——— s. 258.

See EXECUTION OF DECREE.

I. L. R. 35 All. 178

——— ss. 276, 295.—*Attachment—Private assignment—Claims enforceable under an attachment—Claim for rateable distribution of assets—Position of creditors attaching property after a prior attachment and a private assignment subsequent to such prior attachment—Validity of private alienations of property under attachment as against subsequent attachments by other creditors in the event of the withdrawal of the prior attachment—Nessssity for the existence of assets realised by sale or otherwise in execution of a decree to give a right to claim rateable division under s. 295.* In 1894, *A* brought a suit against *B*, obtained a decree and in execution of the decree attached the right, title and interest of *B* in certain properties. After the attachment, in 1896, *B* assigned the whole of his right, title and interest to the 1st defendant. In 1898, the plaintiffs sued *B* and obtained a decree. In 1901, *B* took the benefit of the Insolvency Act, and his insolvency, with a small break not material in this suit, lasted up to the date of the present suit. In 1904, the plaintiffs levied an attachment on the right, title and interest of *B* in the property already subject to the attachment by *A*. In 1907, *A* was paid off and the attachment by him was accordingly withdrawn and thereafter, in 1910, on the application of the 1st defendant to the Judge in Chambers, the attachment by the plaintiffs was raised by an order dated the 15th of April 1910. On the plaintiffs suing for a declaration that the interest of *B* in the said property at the date of the several attachments was liable to be attached and sold in execution of the plaintiffs' decree, that the order of the 15th of April 1910 should be set aside, that the said interest of *B* should be sold in execution of the plaintiffs' decree and the proceeds thereof applied according to law: *Held, that the essential* condition of enforcement of claims under s. 295 of the Civil Procedure Code of 1882, was that there should be assets realised by sale or otherwise in execution of a decree, but that in the present case there were no such assets realised by sale or otherwise in execution of a decree which could have been divided rateably among the creditors who had applied for execution of their decrees. *Held,* further, that the plaintiffs were not the possessors of a claim enforceable under s. 295 or as a consequence enforceable under the attachment by *A*, within the meaning of s. 276, and therefore, that the assignment to the 1st defendant was not void against the plaintiffs. JETHA BHIMA & CO. *v.* LADY JANBAI (1912).

I. L. R. 37 Bom. 138

——— s. 278.

See VOLUNTARY PAYMENT.

I. L. R. 40 Calc. 598

——— s. 287 (*c*)—*Execution of decree—Mortgage on property sold notified at time of sale—Subsequent suit on mortgage—Auction purchaser not*

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

———— s 287—*concld*

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ently making any inquiry as to the genuineness of the mortgage, did so, but did not sell the property subject to the prior incumbrance The property was sold and purchased by the decree-holder *Held*, on suit by the mortgagee, that the decree holder, auction purchaser, was not estopped from contesting the validity of the mortgage so notified *Shib Kunwar Singh* v *Sheo Prasad Singh, I L R 28 All 418*, followed JAIRAJ MAL *v.* RADHA KISHAN (1913)

I. L. R 35 All 257

———— **ss. 287, 311, 312, 588, 594 to 596.**

See APPEAL TO PRIVY COUNCIL

I. L. R 40 Calc. 635

———— **s. 310A.**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R 89

I L. R. 37 Bom 387

———— s 315—*Execution of decree—Sale in execution—Auction purchaser deprived of property purchased owing to failure of judgment debtor's title—Suit to recover purchase money—Limitation—Limitation Act (IX of 1908), Sch I, Arts 62 and 120* *Held*, (i) that an auction purchaser seeking to recover the purchase money paid by him upon the ground that he has been deprived of the property purchased owing to failure of the judgment-debtor's title thereto has no right outside the Code of Civil Procedure, and (ii) that the remedy given by the Code of Civil Procedure is not a suit for money had and received, to which Art 62 of the first Schedule of the Indian Limitation Act, 1908, would apply, but is a suit falling within the purview of Art 120 *Munna Singh* v *Gajadhar Singh, I L R 5 All 577*, and *Mohiudeen Ibrahim* v *Mahomed Mura Lewai, 23 Mad L J 487*, followed *Ram Kumar Shaha* v *Ram Gour Shaha, 13 C W N 1080*, not followed *Hanuman Kamal* v *Hanuman Mandur, I L R 19 Calc 123*, distinguished SIDHESWAR PRASAD NARAIN SINGH *v* GOSHAIN MAYANAND (1913) . . **I. L. R. 35 All 419**

———— **s. 317**

See ESTOPPEL . **I L. R. 36 Mad. 564**

———— **ss. 443, 456, and 462.**

See MINOR . . **I. L. R. 35 All. 487**

———— s. 462—*Compromise of decree made in partition suit by guardian ad litem without leave of Court—Suit by minor on attaining his majority to set it aside—Father of Hindu joint family made guardian ad litem of his son, being also himself a defendant in partition suit—Powers of head of Hindu joint family—Decree in partition suit in*

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd*

———— s 462—*concld.*

favour of father—Form of decree in setting aside compromise S 462 of Civil Procedure Code (Act XIV of 1882) provides that "no next friend or guardian for the suit shall, without the leave of the Court, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian" Where in a suit for partition by a member of a joint family, the father was made third defendant, and his son, a minor, was made sixth defendant, and the Court appointed the father guardian *ad litem* of the minor *Held* (reversing the decisions of the Courts in India) that the powers of the father were controlled by the provisions of s 462 of the Code, and he could not without leave of the Court, do any act in his capacity of father, or managing member of the joint family which he was debarred from doing as guardian *ad litem* To hold otherwise would be to defeat the object of the enactment A compromise made, without the leave of the Court, by the father with the second defendant, of a decree passed against the latter, was held therefore, in a suit brought by the minor on attaining his majority, to be not binding on him The fact that the money was by the decree made payable, not to the minor, but to the father who

was to the effect that the compromise was not binding on the minor, and he was remitted to his original rights under the decree in the partition suit *Manohar Lal* v *Jadunath Singh, I L R 28 All 585, 589, L R 33 I A 128, 131*, followed. GANESHA ROW *v* TULJARAM ROW (1913)

I. L. R. 36 Mad 295

———— s 539—*Decree, effect of, for scheme under, bar to private rights—Specific Relief Act (I of 1877), s 42—Consequential relief—Suit for recovery of office of trustee and injunction substantially valued—Actual possession with tenants who were willing to pay to whomsoever was a trustee—Prayer for possession unnecessary* Where the lands of a temple were in the actual possession of tenants who were willing to pay rent to whomsoever was the trustee, a suit which merely prays for the recovery of the office of trustee and for an injunction against the defendants who were in possession of the office, which injunction was valued at a substantial figure, *viz*, Rs 2,600, does not offend against the proviso to s. 42 of the Specific Relief Act (I of 1877) as the plaintiff had asked for such possession as he could under the circumstances and as the possession of the
would not be diverse to the
recovery of office *Kunj Bihari*
Hiralal, I L. R. 28 Bom 567, f
pathi Pillai v *Ramasami Ayyar, I.*
452, Abdulkadar v. *Mahomed, I. L.*

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— s. 539—*concld.*

Narayanan v. *Shankunni, I. L. R. 15 Mad. 255,* and *Jagannatha Charry* v. *Rama Rayar, I. L. R. 28 Mad. 238,* distinguished. *Subramanyan* v. *Paramaswaran, I. L. R. 11 Mad. 116,* and *Jagadindra Nath Roy* v. *Hemanta Kumari Debi, I. L. R. 32 Calc. 129,* referred to. Where an office of trustee was held by the members of a certain family for nearly a hundred years and by nobody else, the office must be held to be hereditary in that family. S. 539, Civil Procedure Code (Act XIV of 1882), corresponding to s. 92, Civil Procedure Code (Act V of 1908), is not applicable to a suit to enforce a private right such as an hereditary trusteeship of a certain family, and it is no bar to such a suit. *Budree Das Mukim* v. *Chooni Lal Johurry, I. L. R. 33 Calc. 789,* referred to. A scheme once settled by a Court cannot be altered except by the Court and then only on substantial grounds. *Attorney-General* v. *Worcester (Bishop), 9 Hare 328, In re Betton's Charity, 77 L. J. Ch. 193, Re Brown's Hospital* v. *Stamford, 60 L. T. 288,* and *Re Sekeford's Charity, 5 L. T. 488,* followed. A scheme framed under s. 539, Civil Procedure Code, is binding on all (whether worshippers or not) including even one who might have claimed a hereditary trusteeship and have brought a suit to enforce such a right before the settlement of the scheme; and a decree framing a scheme is a bar to a suit by such a person, even though the denial of such a right of suit might act very prejudicially to his interests and even though his application to be made a party to the scheme suit might have been rejected. S. 539 confers upon the Courts in this country the same powers that the Courts in England possessed at the time of its enactment, and the principles of English law are applicable. *Prayag Doss Ji Varu, Mahant* v. *Tirumala Srirangacharlavaru, I. L. R. 28 Mad 319, 324, Chintaman Bajaji Dev* v. *Dhondo Ganesh Dev, I. L. R. 15 Bom. 612, Annaji* v. *Narayan, I. L. R. 21 Bom. 556,* and *Prayag Doss Ji Varu* v. *Tirumala Srirangacharla Varu, I. L. R. 30 Mad. 138,* referred to. RAMADOS *v.* HANUMANTHA RAO (1913).

I. L. R. 36 Mad. 364

——— ss. 562, 564.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XLI, R. 33.

I. L. R. 37 Bom. 289

——— s. 568—*Appeal, admission of fresh evidence on—Court's power.* An appeal Court ought not to admit fresh evidence which, it is not suggested, was not available during the pendency of the trial in the Court of first instance. *Kessowji Issur* v. *Great Indian Peninsula Railway Company, I. L. R. 31 Bom. 381,* and *Krishnama Chariar* v. *Narasimha Chariar, I. L. R. 31 Mad. 114,* relied on. MIDNAPUR ZEMINDARY COMPANY, LD. *v.* MUKTAKESHI DASI (1912).

17 C. W. N. 615
I. L. R. 40 Calc. 402

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*concld.*

——— s. 568—*concld.*

2. ——— "*Or for any other substantial cause*", *effect of—Power of an appellate Court to admit additional evidence —"Other" not ejusdem generis—"To enable it to pronounce judgment," meaning of—Appellate Court, all powers of original Court rest in.* An Appellate Court has power to admit further evidence under the clause "or for any other substantial cause" in s. 568, Civil Procedure Code, which cause need not be *ejusdem generis* with the causes stated in the previous part of the section. *Kessowji Issur* v. *G. I. P. . . . I. L. R. 31 Bom. 381,* explained . . . . *Per* SADASIVA AYYAR. J.—The expression "to enable it (the Appellate Court) to pronounce judgment" means to enable it to pronounce *a satisfactory* judgment; an Appellate Court has all the powers of an original Court. ANDIAPPA PILLAI *v.* MUTHUKUMARA THEVAN (1913) . . . **I. L. R. 36 Mad. 477**

——— s. 578—*Suit tried on merits in spite of defective verification—Defect, if material.* Where a plaint was verified by three out of six plaintiffs, who were adults, and by one of them on behalf of the next friend of the three remaining plaintiffs who were minors but without the next friend's authority, and the Court held that the plaint was not properly verified but nevertheless proceeded to try the case on the merits and dismissed it: *Held,* that the defect in the verification was cured by the provisions of s. 578 of the Code of Civil Procedure. *Basdeo* v. *John Smidt, I. L. R. 22 All. 55, Shama Soonduree* v. *Rohimuddin, 24 W. R. 71,* referred to. SASI BHUSAN DAS *v.* RASIK LAL RAY (1912) . . . **17 C. W. N. 989**

——— Ch. XX—*Insolvency—Insolvent discharged without a schedule of debts being framed—Attempt on the part of a creditor to proceed against after-acquired property.* Where an insolvent had taken advantage of the provisions of Ch. XX of Code of Civil Procedure, 1882, and had been discharged under s. 351, but no schedule of debts had been framed, it was *held* that a judgment-creditor of the insolvent could not thereafter have recourse against property which had come into the hands of the insolvent subsequently to his discharge. AMIN-UD-DIN HAIDAR *v.* SHEORAJ SINGH (1913) . . . **I. L. R. 35 All. 402**

CIVIL PROCEDURE CODE (ACT V OF 1908).

——— ss. 1 (2), 48, 154.

See EXECUTION OF DECREE.

I. L. R. 40 Calc. 704

——— s. 2.

See SUCCESSION ACT (X OF 1865), s. 244 . . **I. L. R. 35 All. 448**

——— *Rejection of appeal as time barred before admission, if decree.* An order by an Appellate Court rejecting an appeal before it

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— s. 2—*concld.*

17 C W N 807

——— ss **2, 104, 148**—*Pre emption—Decree in pre emption suit fixing time for payment—Order extending time—Appeal— Decree — Order* *Held*, that s 148 of the Code of Civil Procedure, 1908, does not entitle the Court to extend the time fixed by the decree for payment of the pur chase money in pre emption cases *Held*, also, that an order made under s 148 of the Code of Civil Procedure 1908 is not a decree within the meaning of s 2 of the Code, nor is it appealable as an order under s 104 *Rahima* v *Nepal*, *I L R 14 All 420* distinguished SURANJAN SINGH v RAM BAHAL LAL (1913)

I L R 35 All 582

tions—Superintendence and control by the High Court—Courts subordinate to the High Court The Mamlatdars Courts Act (Bom Act II of 1906) expressly constitutes the Collector (taking pro ceedings under that Act) a Court and when he exercises judicial functions he is subject to the superintendence and control of the High Court under s 115 of the Civil Procedure Code (Act V of 1908) The Collector has no authority to reverse the decision come to by the Mamlatdar upon the evidence S 3 of the Civil Proce dure Code (Act V of 1908), in which certain Courts are stated to be subordinate to the High Court, does not exclude all other Courts from the category of Courts subordinate to the High Court *The Collector of Thana* v *Bhaskar Mahadev Sheth*, *I L R 8 Bom 264* referred to PURSHOTTAM JANARDAN v MAHADU PANDU (1912)

I L R 37 Bom 114

——— s **7 (1) (b), ss 69, 70, Sch III**—*Decree—Interest awarded up to realisation—Execution—Interest calculated in darkhast up to its date—Collector carrying on execution and paying interest and amount as prayed in darkhast—Court directing Collector to continue execution till payment of interest up to realisation—Discretion of Collector—Jurisdiction of Court* The plaintiffs obtained a money decree against the defendants which award ed interest on the decretal amount up to its realisa tion They applied to execute the decree and calculated interest over the decretal amount up to the date of the application The Collector, to whom the execution proceedings were trans

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd*

——— s 7—*concld*

The Court sent back the proceedings to the Collec tor, asking him to continue in management till interest over the decretal amount from the date of the application to the date of realisation was paid to the plaintiffs The District Court held on appeal that the Court had no jurisdiction to interfere with what lay completely within the Collector s jurisdiction and reversed the order On second appeal —*Held* restoring the order passed by the first Court, that under the provisions of s 7 (*1*) (*b*) of the third schedule of the Civil Procedure Code of 1908 the Collector had to take into account the whole amount with the total interest awarded by the decree, and that that would include not merely interest up to the date of the application but also interest which would run according to the decree thereafter *Per* CHANDAVARKAR J — The Civil Procedure Code (ss 69 and 70) of 1908

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So far therefore as the machinery necessary for the satisfaction of the decree is concerned the Col lector is the sole authority The discretion is his, and no Civil Court can interfere with that dis cretion But that discretion does not extend to any jurisdiction in the Collector to determine whether the decree itself has been satisfied or not The latter jurisdiction is the Civil Court s It is that Court alone which is competent to deter mine the question judicially BHURCHAND HANSRAJ v VIRA CHAMPA (1912) **I L R. 37 Bom 32**

——— **S 9, Sch II, s 20**—*Dispute as to manpan—Suit of civil nature—Award by arbitrators settling dispute out of Court—Application to file award—Award can be filed though referring to manpan—Agreement to distribute cash allowance—Pensions Act (XXIII of 1871)* S 20 of the second

an award to be filed, only because it deals with *manpan*, that is, matters relating to a complement or dignity about which the Courts would have no jurisdiction to entertain suits *It is* the policy of law to enable parties who by private arrange ment settle a dispute to have that settlement made legally effective *If there is something to* arbitrate on and there is a reference and an award, the policy of the law is that that award should be given effect to without minute inquiry by the Court Disputes about *manpan* which cannot be settled in the Courts can often only be effectively settled by arbitration The parties are at liberty

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— s. 9—*concld.*

without in any way going against the words or the spirit of the Pensions Act (XXIII of 1871) to agree amongst themselves that when the cash allowance is received from Government it shall be distributed among them in a certain way. RAGHAWENDRA AYYAJI *v.* GURURAO RAGHAWENDRA (1913) . . . I. L. R. 37 Bom. 442

——— s. 11—

1. ——— Res judicata—*First suit by widow alleging that the property was her husband's separate property—Suit, decision of—Appeal by widow—Withdrawal of appeal—The widow's daughter contending in a subsequent suit that the property was her father's self-acquisition—Plea barred by res judicata.* In a suit brought against her husband's nephew, a Hindu widow alleged that certain property was her husband's separate property. The Court held that the property was joint property; but allowed the widow to be in possession of it in lieu of her rights to maintenance. The widow appealed against the decree, but she subsequently withdrew the appeal. On the widow's death, the property passed into the possession of her daughter who claimed it as heir to her father. The nephew filed the present suit to recover possession of the property from the daughter, who resisted the claim on the ground that the property having been the separate property of her father had descended to her and that the decision in the first suit was not binding on her. *Held*, that the first decree operated as *res judicata* against the defendant inasmuch as it was a decree against the widow as representing her husband's estate. *Held*, further, that so far as the first suit was concerned the case was fairly contested and the mere withdrawal of the appeal by the widow was not sufficient to deprive the decree of its operative character in law. *Katama Natchier* v. *The Rajah of Shivagunga, 9 Moo. I. A. 539*, followed. GHELABHAI *v.* BAI JAVER. (1912) I. L. R. 37 Bom. 172

2. ——— *Res judicata—First suit for partition—Declaratory decree—Second suit by other members for partition of their share—Res judicata does not bar the second suit.* A Khoti village was owned by two families known as Varang and Desai. In 1854, two members of the Desai family brought a suit for partitioning the one-half share of the Desai family in the village. That suit ended in a decree which awarded them the share. The decree remained unexecuted. In 1904, the plaintiff, a member of the Varang family, sued the Varang as well as the Desai members to obtain his $\frac{1}{34}$th share by partition of the village. Some of the defendants in both families admitted the plaintiffs' claim and asked that their shares also should be awarded to them on partition. It was contended that the claim of the Desai defendants to obtain their share in the village was barred as

CIVIL PROCEDURE CODE (ACT V OF 1808)—*contd.*

——— s. 11—*contd.*

res judicata in virtue of the decree of 1854, which awarded to them half a share in the village:—*Held*, that the first decree was a declaratory decree and did not operate as *res judicata* in the present suit. *Babaji Parshram* v. *Kashibai, I. L. R. 4 Bom. 157* and *Nasrat-ullah* v. *Mujibullah, I. L. R. 13 All. 309*, followed. *Soni Maganlal* v. *Munshi Himatbhai, 3 Bom. L. R. 94*, distinguished. JAGU BABAJI *v.* BALU LAXMAN (1912) I. L. R. 37 Bom. 307

3. ——— *Letters Patent, cl. 12—Evidence Act (I of 1872), s. 44—Suit for restitution of conjugal rights—Previous suit for similar relief—Competency of the Court to try the previous suit—Dismissal of the suit for want of jurisdiction after raising and deciding issues on the merits—No bar of res judicata.* The plaintiff filed a suit for restitution of conjugal rights against the defendant and for an injunction restraining her from marrying any other person pending the disposal of the suit. The defendant raised the plea of *res judicata* urging that the plaintiff had filed a previous suit against her in the High Court for similar relief and had failed in it. The previous suit was filed without obtaining the leave of the Court under cl. 12 of the Letters Patent, the residence of the parties being outside the jurisdiction of the Court. The Court, therefore, dismissed the suit for want of jurisdiction though issues on the merits were raised and decided. The first Court disallowed the plea of *res judicata* on the ground that the judgment in the previous suit was delivered by the Court not competent to do so in consequence of the absence of leave. On appeal by the defendant, the Judge dismissed the suit holding that the absence of leave did not go to the root of the jurisdiction of the Court and therefore the judgment of the Court was the judgment of a Court having jurisdiction. *Held*, on second appeal by the plaintiff, that the judgment in the previous suit was delivered by a Court not competent to deliver it within the meaning of s. 44 of the Evidence Act (I of 1872), and therefore the plea of *res judicata* could not prevail. ABDUL KADIR *v.* DOOLANBIBI (1913) I. L. R. 37 Bom. 563

4. ——— *Res judicata—Prior and subsequent mortgagees—Suit by first mortgagee impleading second but no decree as to rights of first mortgagee—Suit for sale by prior mortgagee not barred.* A second mortgagee brought a suit for sale on his mortgage, in which he impleaded the first mortgagee and asked to redeem. The first mortgagee did not appear. The plaintiff got a decree for sale but the decree did not either give him redemption of the first mortgage or direct the property to be sold subject to the first mortgage. *Held*, that the first mortgagee was not precluded from subsequently bringing a suit for sale on his mortgage. *Srinivasa Rao Saheb* v. *Yamuna bhai Ammall, I. L. R. 29 Mad. 81, Katchala;*

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd*

——— s 11—*concld*

Mudali v *Kuppanna Mudali Mad W N 1912, 41*, followed *Sri Gopal* v *Pirthi Singh, I L R 24 All 429, Natu Krishnama Chariar* v *Annangara Chariar I L R 30 Mad 353* and *Gopal Lal* v *Benarasi Pershad Chowdhry, I L R 31 Calc 428*, distinguished AJUDHIA PANDE v INAYAT ULLAH (1912) **I L R 35 All 111**

5 ——— *Res judicata—Two suits one judgment and two decrees—Two appeals one of which abates before the other is heard* A plaintiff instituted on the same day and in the same Court, two suits, in each of which the claim was for a declaration that he was the *mahant* of a certain *math* The one was against defendant *A* only, the other against defendants *A* and *S* Both suits were decided by a single judgment, but a separate decree was framed in each In the former suit *A* appealed In the latter *S* appealed but *A* did not Pending *A* s appeal *S* died and his appeal abated and judgment in the case became final *Held* that the hearing of *A* s appeal was barred *Zaharia* v *Debia I L R 33 All 51*, followed ANANT DAS v UDAI BHAN PARGAS (1913) **I L R 35 All 187**

6 ——— *Res judicata—Previous rent suit—Question of area of holding and amount of rent decided in previous suit if res judicata in subsequent suit* In a previous suit for rent the plaintiffs alleged that the defendants besides holding certain plots of land originally forming their own holding also held certain other plots belonging to another tenant *S* who had abandoned his holding at a consolidated *jama* of Rs 30 Defendants denied holding the latter plots and contended that their *jama* was only Rs 16 per year It was held that the defendants were liable to pay rent at the rate of Rs 16 per annum for a holding which included the lands alleged to have formerly belonged to *S* *Held* that the questions whether the lands alleged to have been formerly held by *S* formed part of the defendant s holding and of the amount of rent payable were directly and substantially in issue in that suit and were *res judicata* in a subsequent suit by the plaintiffs

MAHAMMAD (1912) **17 C W N 76**

——— s 13

See RIGHT OF SUIT

I L R 36 Mad. 141

——— **s 47, O XXI, rr. 22, 90.**

See EXECUTION OF DECREE

I. L. R. 40 Calc 45

——— s 47

1 ——— *Execution of decree—Partition—Objection that decree holders had realised certain debts assigned by the decree to the judgment debtors—Procedure* The decree in a partition suit allotted *inter alia* a sum of money to be paid by the judgment debtor to the decree-holders and assigned certain debts on account books to the judgment debtor On application by the decree holders for execution as to the sum allotted to them, the judgment debtor took objection that the decree holders had as a matter of fact realized a large amount out of the debts which had been assigned by the decree to him *Held*, that the question thus raised was not a matter falling within the purview of s 47 of the Code of Civil Procedure and that the judgment debtor s remedy was by a separate suit to recover from the decree holders the amount alleged to have been illegally realized MOHAN LAL v JAGAN NATH (1913) **I L R 35 All 243**

2 ——— *Execution, application for—Court s order when amounts to adjudication—Subsequent dismissal of application for default—Fresh application by decree holder—Judgment debtor if can raise question of limitation* Where on the application of the decree holder for execution, the Court issued notice on the judgment debtor which was duly served and on the latter s prayer for time to put in objections an adjournment was granted but the judgment debtor failed to appear on the 4th January 1908 the date fixed for hearing and an order was passed by the Court to the following effect Decree holder is to take further steps on or before the 7th January 1908 " but on the 7th January the application was dismissed for default *Held* that the order passed on the 4th January necessarily implies an adjudication that the decree at the time was capable of execution and it is no longer open to the judgment debtor to re open the matter on a subsequent application by the decree holder for execution and urge that the previous application was made beyond the time allowed by law and consequently the application for execution was barred by limitation *Mungal Proshad Dichit* v *Girija Kanta Lahiri I L R 8 Calc 51 Sheikh Budan* v *Ram Chandra, I L R 11 Bom 537*, followed *Held*, further that it is not essential in such a case that there should be an order for attachment, the principle laid down above being applicable whenever there is an adjudication by the Court upon the rights of the parties to the execution proceedings *Moazzam Hossain* v *Sarat Coomari Debi, 11 C L J 357*, relied on, *Tileswar Rai* v *Parbati, I L R 15 All 198*, dissented from *Shooraj Singh* v *Kameswar Nath, I L R 24 All 283*, referred to If an order has been made which directly or by implication determines the rights of the parties to an execution proceeding the fact that the decree holder does not choose to proceed with execution and the case is struck off does not entitle either party to re open the question upon which there has been a previous adjudication. *Kamini Debi* v *Aghore Nath, 11*

CIVIL PROCEDURE CODE (ACT V OF 1908—*contd.*

———— **s. 47**—*concld.*

C. L. J. 91, followed. *Bhagwan* v. *Dhondi, I. L. R. 22 Bom. 83, Monmohan Karmokar* v. *Dwarka Nath Karmokar, 12 C. L. J. 312, Khosal Chandra Roy* v. *Ukiladdi, 14 C. W. N. 114, Mochai Mandal* v. *Meseruddin Molla, 13 C. L. J. 26*, distinguished. MURLIDHAR SUKUL *v.* NURSINGH DAS (1911) **17 C. W. N. 113**

3. ———— *Order by High Court for removal of attachment pending appeal on furnishing security—Order by lower Court accepting such security if appealable.* On the application of the judgment-debtor, the High Court ordered that a certain attachment should be removed pending the hearing of a certain appeal on the petitioner furnishing security to the satisfaction of the Court below for execution of the decree. The case went back to the lower Court which accepted the security that was tendered. Against this order an appeal was preferred to the High Court. *Held*, that the order appealed against determined no rights of the parties that were in controversy and no appeal lay under the Code of Civil Procedure (Act V of 1908). Every order passed in relation to execution need not necessarily be deemed to come within the scope of the definition in s. 2 (2), Civil Procedure Code. SARASWATI BARMANIA *v.* MOTI BARMANYA (1913) **17 C. W. N. 1240**

———— **s. 60.**

1. ———— *Dekkhan Agriculturists' Relief Act (XVII of 1879), s. 22—Decree—Execution—Agriculturist—Exemption from liability to attachment or sale—Absence of proof of exemption—Jurisdiction of the Court to order sale.* S. 60 of the Civil Procedure Code (Act V of 1908) lays down the general rule that property liable to attachment and sale in execution of a decree is lands, houses, etc., belonging to the judgment-debtor. An agriculturist, in order to resist the application of that general rule, must prove that he belongs to the privileged class so as to render s. 22 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) applicable to his case. In the absence of such proof the exemption from liability to attachment or sale does not exist for the purpose of execution-proceedings and the executing Court has, therefore, complete jurisdiction to make the order for sale. NARAYAN ANANDRAM *v.* GOWBAI (1912) . **I. L. R. 37 Bom. 415**

2. ———— *Transfer of Property Act (IV of 1882), s. 130—Trusts Act (II of 1882), s. 5—Contract Act (IX of 1872), s. 2 (i)—Married Women's Property Act (III of 1874)—Life policy expressed to be for the benefit of the wife of the assured—Attachment of the policy by the judgment-creditors of the deceased assured—Suit by the widow of the assured for a declaration that the policy was not liable to attachment—Dismissal of suit.* A policy of insurance effected by the assured upon his own life was expressed to be for the benefit of his wife. Subsequently upon the death of the assured his judgment-creditors having attached the policy,

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

———— **s. 60**—*contd.*

his widow applied to raise the attachment. Her application being rejected, she filed a suit for a declaration that the policy was not liable to attachment in execution of the defendants' decree. *Held*, dismissing the suit, that under s. 60 of the Civil Procedure Code (Act V of 1908) the policy was attachable as 'a security for money or saleable property belonging to the judgment-debtor over which he had a disposing power which he might exercise for his own benefit.' The policy was a contract between the deceased and the Insurance Company expressed to be for the benefit of the wife of the assured whereby the Company promised, on proof of the death of the assured, to pay the policy monies to the trustee or trustees who might be appointed by the assured by separate writing, and in default of trustees to the beneficiary (that is, the widow of the assured) and if the beneficiary be dead, to the assured's heirs, executors, administrators or assigns. Unless and until the appointment of trustees on behalf of the wife, it was in the power of the assured at any time to put an end to the contract by ceasing to pay the premia or otherwise to defeat the expectation of his wife by assigning the policy to a creditor. He could divest himself of his beneficial interest in the policy only by assignment in writing as provided by s. 130 of the Transfer of Property Act (IV of 1882) or signed declaration of trust as provided by s. 5 of the Trusts Act (II of 1882). He had adopted neither course. The policy on his death, therefore, formed part of his estate, the right of action against the Company being in his executors or other representatives untrammelled by any trust in favour of his wife. Married Women's Property Act (III of 1874) is not applicable to Hindus. There is nothing in the Contract Act (IX of 1872) to show an intention that a person not a party to the contract can sue on it. *In re Flavell, 25 Ch. D. 89, Bhikaji* v. *Dattatraya, 2 Bom. L. R. 888, Samuel* v. *Ananthanatha, I. L. R. 6 Mad. 351, Chinnaya Rau* v. *Ramaya, I. L. R. 4 Mad. 137*, distinguished. SHANKAR VISHVANATH *v.* UMABAI (1913) . **I. L. R. 37 Bom. 471**

———— **s. 60, cl.** *(2) (b)—Army Act, 1885, (44 & 45 Vict.), s. 136—Officer in the British Army serving in India—Money decree—Execution—Salary not liable to attachment.* S. 60, cl. (2) (b) of the Civil Procedure Code (Act V of 1908) leaves the provisions of the Army Act, 1883 (44 & 45 Vict.) untouched. S. 136 of the Army Act, 1885 (44 & 45 Vict.), amended in 1895 provides, that the salary of the officer in the British Army serving in India shall be paid to him without deduction unless the Legislature in India has directed to the contrary in that behalf. There is no law in India which expressly or by necessary implication directs that such officer's salary is liable to attachment in execution of a decree. VELCHAND *v.* BOURCHIER (1912) **I. L. R. 37 Bom. 26.**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd*

——— s 60—*contd*

——— s 60 (c)—*Execution of decree—Attachment—Object on that attached property is the house of an agriculturist—Judgment debtor both zamindar and agriculturist—Burden of proof* Where a judgment debtor whose house was attached in execution of a decree took objection that the house was the house of an agriculturist to which s 60 (c) of the Code of Civil Procedure applied and was not susceptible of attachment and it was found that the judgment debtor was both an agriculturist and a zamindar *Held* that it lay on the judgment debtor to prove that the house was strictly of the nature contemplated by the provisions of s 60 (c) JAMNA PRASAD RAUT *v* RAGHUNATH PRASAD (1913) I L R 35 All 307

when valid involuntary sale of—Direction in execution for payment of annuity in Court if valid—Annuity charged on property distinguished from covenants to pay future maintenance P finding himself unable to pay his debts conveyed all his properties for consideration to his son who assumed the payment of specific debts and agreed to pay to P a monthly sum of Rs 4 000 payable on the first day of each month and two annual sums of Rs 9 000 and Rs 1 900 respectively These sums were made first charges on a portion of the estate conveyed subject to the then existing mortgages executed by the vendor In the deed it was further provided that the allowance was not to be alienated by the vendor in any manner and that the sums as they fell due were in no circumstances to be payable to or demandable by any person other than the vendor The respondent having obtained a decree for money against P applied for attachment and sale of the right title and interest of P in the monthly allowance payable from and charged upon the estate in the hands of the vendee P objected that the right to the annuity was not saleable property within s 60 Civil Procedure Code The Subordinate Judge overruled the objection and issued a prohibitory order directing the payment of the allowance into Court

a mere right to receive future maintenance within cl (n) of the proviso to that section That the clause making the allowance inalienable and payable only to the vendor was an illegal restraint on alienation and did not even if considered valid as being in the nature of a spendthrift trust necessarily imply a bar to involuntary alienation at the instance of creditors That the direction for payment into Court of the allowance as it fell due was contrary to law the judgment creditor being entitled only to bring to sale the right of the judgment debtor who would therefore be entitled to take out the sums already deposited in Court in pursuance of the erroneous order of the Subordinate Judge PADMANUND SINGH *v* RAMA PROSHAD MOHT (1912) 17 C W N 662

——— s 66—*Execution of decree—Benami purchase—Claim against certified purchaser but not by representative of the real purchaser* The widow of one Bhola Nath purchased a house at a Civil Court auction sale in the name of her son in law Baldeo and incorporated it into another house left by her husband who had died sonless On her death one of her daughters claimed the house as an heir of her deceased father The son in law in whose name the house was purchased raised the plea that he was the certified auction purchaser and the suit was barred by s 66 of the Code of Civil Procedure *Held*, that as the plaintiff did not claim through the widow but through the widow s husband her father the suit did not come within the purview of s 66 of the Code *Ram Narain v Mohanian I L R 28 All 82* distinguished NARAIN DEI *v* DURGA DEI (1913) I L R 35 All 138

——— s 68, O XXI, r 100—*Decree—Execution proceedings transferred to Collector—Sale—Auction purchaser placed in possession of property—Application by person wrongly dispossessed to be made to Collector and not to Civil Court—Collector not ministrial officer—Jurisdiction—Civil Court* Where execution proceedings are transferred to a Collector and a person is wrongly ousted or dispossessed under the Collector s order he should apply to the Collector and not to the Court complaining of such ouster or dispossession O XXI r 100 of the Civil Procedure Code 1908 has no application to a case where the execution of the decree has been transferred to the Collector and he has acted under the powers conferred on him by the Local Government under s 70 of the Code RAGHO CHANDRARAO *v* HANMATI CHANDRARAO (1913) I L R 37 Bom 488

——— s 73, O XXI, r 89

See RATEABLE DISTRIBUTION

I L R 40 Calc 619

——— s 73—*Rateable distribution of assets application for—Applicant whether real decree holder execution Court if may determine* It is competent to the execution Court to determine whether an applicant for rateable distribution of assets under s 73 of the Code of Civil Procedure is a real decree holder or a benamidar for the judgment debtor *In re Sundar Das I L R 11 Calc 42 Chaugan Lal v Fazar Ali I L R 13 Bom 134*, followed *Raghu Nath Gurati v Pus Chatrapat Singh 1 C W N 633* referred to PURAN CHAND BOID *v* PURENDRA NARAIN SINGH (1912) 17 C W N 320

——— s 75—*Commissioner, trial of suit on merits, if can be delegated to* Where the Subor

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— s. 75—*concld.*

dinate Judge after framing issues and considering preliminary objections referred the case to a Commissioner for trial on the merits: *Held*, that the power of a Court to issue a commission is defined in s. 75 of the Code of Civil Procedure (Act V of 1908), and the Subordinate Judge has in this case improperly delegated his judicial functions to a Commissioner. RAM NARAIN SINGH *v.* ODINDRA NATH MUKERJEE (1911)

17 C. W. N. 369

——— s. 80.

See NOTICE . **I. L. R. 40 Calc. 503**

——— *Suit against public officer—Official Assignee—Suit for injunction—Notice.* A suit brought against a public officer (*e.g.*, the Official Assignee, Bombay) to restrain him from doing an act as such officer, can be brought without giving notice as required by s. 80 of the Civil Procedure Code. *Flower* v. *Local Board of Low Leyton, 5 Ch. D. 347*, followed. NAGINLAL CHUNILAL *v.* OFFICIAL ASSIGNEE, BOMBAY (1912) . . **I. L. R. 37 Bom. 243**

——— s. 86.—*Suit against Ruling Chief—Sanction of Governor General in Council—Suit for declaration of title to land, sanctioned by Governor-General in Council—Amendment of plaint by addition of prayer for recovery of possession—Subsequent sanction of Governor-General in Council for suit for recovery of possession.* Where the plaintiff with the sanction of the Governor-General in Council obtained under s. 86, Civil Procedure Code, instituted a suit in the Court of the Subordinate Judge of Rungpur against His Highness the Maharaja of Cooch Behar for a declaration that the plaintiff was entitled to certain lands within the jurisdiction of that Court and that a certain map prepared by the Settlement Officer was incorrect and the Court on the application of the plaintiff, after the defendant filed his written statement pleading, *inter alia*, that the plaintiff was never in possession of the lands in dispute, and the suit was barred by limitation, amended the plaint by the addition of a prayer for recovery of possession and framed an issue as to whether the suit as amended by the addition of a prayer for recovery of possession was instituted with the consent of the Governor-General in Council within the meaning of s. 86, Civil Procedure Code, or was liable to be dismissed and decided it in favour of the plaintiff and the plaintiff subsequently obtained a fresh sanction from the Governor-General in Council for the institution of a suit for recovery of possession of the land in dispute, the High Court set aside the order of the lower Court deciding the issue in question in favour of the plaintiff and sent back the case to the lower Court so that the plaintiff might apply to that Court for leave to withdraw the plaint with liberty to bring a fresh suit on the same cause of action and on the new sanction. NRIPENDRA NARAYAN BHUP *v.* MANINDRA CHANDRA NUNDY (1911) . . . . **17 C. W. N. 1242**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— s. 89, O. XXIII, r. 3, and Sch. II—*Arbitration—Suit referred to arbitration by the parties without the intervention of the Court—Award, recording of, in such cases—Procedure to be adopted in case an award is disputed.* Where a suit which is pending is referred by the parties to arbitration, without the intervention of the Court, and an award is made, the submission and the award may, if the Court sees fit, be recorded as an agreement adjusting or compromising the suit and a decree may be passed in terms of such award and the Court has power to inquire into a disputed compromise and to record it, if satisfied that the compromise was properly arrived at. The procedure to be followed in such cases is that laid down in Order XXIII, rule 3, and not that laid down in the Second Schedule of the Civil Procedure Code. The provisions of the Second Schedule do not apply to or contemplate a reference to arbitration by parties to a suit which is pending outside the suit and without the intervention of the Court and the operation of the Second Schedule is excluded by the words used in s. 89 of the Code, "Save in so far as is otherwise provided by ...... or by any other law for the time being in force," which last words are applicable to O. XXIII, r. 3. HARAKHBAI *v.* JAMNABAI (1912).

I. L. R. 37 Bom. 639

1. ——— s. 92.—*Public religious trust—Suit to recover trust property from strangers.* The provisions of section 92 of the Civil Procedure Code (Act V of 1908) do not apply to a suit, brought by the trustees of a public religious trust, to recover property belonging to the trust which has gone wrongfully into the possession of strangers to the trust. MALHAR BHAGVANT *v.* NARASINHA KRISHNA (1912) . . **I. L. R. 37 Bom. 95**

2. ——— *Waqf—Suit for declaration of plaintiff's right as mutawalli and for possession—Jurisdiction.* Where the plaintiff came into court alleging that he was the rightful *mutawalli* of a certain *waqf* and that the defendant, on the death of the last incumbent, had wrongfully taken possession of the *waqf* property, and asking to be put into possession thereof as *mutawalli*, it was *held* that this was not a suit which fell within the purview of s. 92 of the Code of Civil Procedure and was properly filed in the court of a Subordinate Judge. *Budree Das Mukim* v. *Chooni Lal Johurry, I. L. R. 33 Calc. 789*, and *Ghelabhai Gavrishankar* v. *Uderam Icharam, I. L. R. 36 Bom. 29* referred to. *Muhammad Ibrahim Khan* v. *Ahmad Saiyid Khan, I. L. R. 32 All. 503*, and *Said Ali* v. *Ali Jan, I. L. R. 35 All. 98*, distinguished. MUHAMMAD ABDUL MAZID KHAN *v.* AHMAD SAID KHAN, (1913) . . . . **I. L. R. 35 All. 459**

——— s. 92 (*1*)—*Procedure—Mahomeadan law—Waqf—Trust for a public purpose of a religious or charitable nature.* Where a trust is a trust created for a public purpose of a religious or charitable

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— s 92—*concld*

nature (in this case a *waqf* under the Mahomedan law) no suit can be maintained for the removal of a duly appointed trustee save in conformity with the provisions of s 92 sub s (*1*) of the Code of Civil Procedure SAIYD ALI *v* ALI JAN (1912) I L R. 35 All. 98

——— s 94 (*e*)—*Temporary injunction application for—Order by Court calling upon defendant to furnish security and submit accounts—Order if made with jurisdiction—Appeal—Revision* Where on the plaintiff s application for the issue of a tem
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submit accounts of the minerals appropriated every week from the date of the application *Held* that the order was not one passed under r 1 of O XXXIX of the Civil Procedure Code and was not appealable under cl (*r*) of r 1 of O XLIII That the order was an interlocutory order made under cl (*e*) of s 94 of the Code to prevent the ends of justice from being defeated and should not be set aside in revision SITO MAHTON *v* F F CHRISTIAN (1912) 17 C W N 318

Practice and procedure In a suit for redemp on a preliminary issue was raised and decided that the plaintiff was an agriculturist Accounts were next taken under the provisions of the Dekkhan Agriculturists Relief Act (XVII of 1879) and a *redemption decree was passed On appeal from* the final decree the question as to the status of the plaintiff was raised and the Court of Appeal decided that the plaintiff was not an agriculturist, and ... increasing the amount
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did *Held* that no appeal was necessary against the preliminary finding, and that unless there was a preliminary decree no appeal could lie under the provisions of s 97 of the Civil Procedure Code (Act V of 1908) *Bai Divali* v *Shah Vishnav Manordas I L R 33 Bom 182* followed *Govind Ramchandra* v *Vithal Gopal I L R. 36 Bom 536* explained SAKHARAM VISHRAM *v* SADASHIV BALSHET (1913) I. L R. 37 Bom 480

——— s 98

See MINOR I. L. R. 35 All. 487

——— s 100—*Fact, finding of based upon evidence assumed to exist, if contrary to law—Second appeal* Where the lower Appellate Court not merely misunderstood the effect of a witness s deposition but referred to evidence which did not exist at all and based its decision principally, if not entirely, upon it the decision, though on a question of fact, would be contrary to law and

——— s 100—*concld*

liable to be set aside on second appeal *Bibee Ameerun* v *Shaik Cherag Ali, 24 W R 343* relied on *Durga Chaudhurani* v *Jewahir Singh Chaudhury, L R 17 I A 122 I L R 18 Calc 23 Ram Rattan Sukul* v *Nandu L R 19 I A 1 I L R 19 Calc 249* referred to BHUPENDRA KUMAR CHUCKERBUTTY *v* PEARY MOHAN RAY (1912) 17 C W N 37

——— s 104 (*1*) (c)—*Arbitration award order modifying—Appeal against how far lies* Cl (*c*) of sub s (*1*) of s 104 of the Civil Procedure Code does not confer an unrestricted right of appeal, in other words when an order has been made by which an award has been modified or corrected,

an appeal against the order only in so far as it modifies or corrects the award RAJBUNS SAHAY *v* SOORJEE LAL (1911) 17 C W N 617

——— ss 109 110, O XLV, r 3

See APPEAL TO PRIVY COUNCIL I. L. R 40 Calc 685

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but the value of the subject matter in dispute on appeal to His Majesty in Council was less than *Rs 10 000 On the other hand* the proposed appeal to His Majesty in Council necessarily involved a decision as to the validity of an award which dealt with property of far greater value and which had been declared by the High Court to be invalid *Held* that the provisions of section 110 of the Code of Civil Procedure applied and a ... not neces

to SRI KISHAN LAL *v* KASHMIRO (1913) I L R 35 All. 445

——— ss 112, 151, O XLI, r 5 (2)

See HIGH COURT, JURISDICTION OF I. L. R. 40 Calc 955

——— s. 115

See HIGH COURT, JURISDICTION OF I. L. R. 40 Calc 477

1 ——— *Revision, High Court s jurisdiction in—Prejudice it must be proved—Valuation of suits—Agreement to grant mourasi lease—Suits to enforce, how valued* Where the District Judge set aside the decision of the

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **s. 115**—*concld.*

Subordinate Judge as to the proper valuation of a suit and simply accepted the valuation given by the plaintiff without giving any reasons for arriving at that decision and without attempting to ascertain the materials on which that valuation was based and in fact without arriving at a judicial decision at all: *Held*, that the High Court should interfere in such a case under s. 115, Civil Procedure Code, if satisfied that the decision of the District Judge was wrong. *Amir Hassan* v. *Sheo Baksh, I. L. R. 11 Calc. 6*, distinguished. Where the Subordinate Judge in his view of the value of the suit returned the plaint for presentation to the Munsif and the District Judge set aside that decision and it was contended that the High Court should not interfere as there was no prejudice: *Held*, that as the law requires that suits of a particular value should be brought in particular Courts, where an order was against that law, no question of prejudice arises in setting aside that order. Where a land was taken for clearing and bringing under cultivation, under an agreement that after a certain number of years the defendant would grant a *mokurari mourasi* lease, and a suit was subsequently brought by the lessee for a declaration of his *mourasi mokurari* title and for the execution of the lease: *Held*, that the suit was in effect one to enforce the agreement to lease. The *mourasi mokurari* title would only accrue after the lease was granted and the suit could therefore be valued on the footing of that title. PORT CANNING AND LAND IMPROVEMENT COMPANY, LD. *v.* ROSON ALI MOLLAH (1912) . . . . **17 C. W. N. 160**

2. ——— *Jurisdiction, failure to exercise—Limitation Act (XV of 1877), s. 7—Revision on the ground of limitation. Semble:* A Court decreeing or allowing a time barred suit or application, without considering whether it is so or not, may be said to have failed to exercise jurisdiction vested in it by law so as to bring the matter within the scope of s. 115 of the Civil Procedure Code. *Held*, that a Court cannot be said to have failed to exercise jurisdiction merely because it omitted to consider *ex proprio motu* the question whether a person was entitled to proceed out of time by reason of some special provision of law, *e.g.*, s. 7 of the Limitation Act, such question not having been raised by him or on his behalf. The mere fact that in the headings to certain applications made in the case the person was described as a minor represented by a guardian was not sufficient to entitle him to the benefit of s. 7 of the Limitation Act or to throw upon the Court the duty of raising the point on his behalf. *Benod Behari Bhadra* v. *Ram Sarup Chamar, 16, C. W. N. 1015*, followed. PANCHU MONDAL *v.* SHEIKH ISAF (1913) . . . . . **17 C. W. N. 667**

——— **s. 141. O. XLVI, r. 1**—*Reference in proceeding neither a suit nor appeal—Jurisdiction of High Court.* O. XLVI, r. 1, read with s. 141, Civil

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **s. 141**—*concld.*

Procedure Code, does not authorize a reference to the High Court in a matter which is neither a suit nor an appeal. S. 141 does not authorize a Court to invoke the jurisdiction of another Court any more than it authorizes a party to do so by way of appeal. Such right must be expressly conferred by statute. DAMODARA MENON *v.* KITTAPPA MENON (1913) . . **I. L. R. 36 Mad. 16**

——— **Sch. II, para. 17**—*Agreement to refer to arbitration a pending litigation, privately, not coming under—Order filing agreement—Appeal, maintainability of—Civil Procedure Code (Act V of 1908), O. XXIII, r. 3—Mere agreement is not an adjustment under.* An order of a Court filing an agreement to arbitrate presented by the parties to a suit is the decree and is appealable as such even under the old Civil Procedure Code (Act XIV of 1882) as well as under s. 104 (*d*) of the new Code. *Ghulam Khan Muhammad Hassan, I. L. R. 29 Calc. 167, Narayana Rao* v. *Sarabaiah, 21 Mad. L. J. 263* and *Tiruvengadathiendar* v. *Vaidinatha Ayyar, I. L. R. 29 Mad. 303*, followed. Paragraph 17 of second schedule to Civil Procedure Code (Act V of 1908) corresponding to s. 523, Civil Procedure Code (Act XIV of 1882), covers only cases where parties without having recourse to litigation agree to refer their differences to arbitration. So an agreement to refer to arbitration a pending litigation made without the intervention of the Court cannot be filed under paragraph 17 of the second schedule. *Ghulam Khan* v. *Muhammad Hassan, I. L. R. 29 Calc. 167*, and *Tincowry Dey* v. *Fakir Chand Dey, I. L. R. 30 Calc. 218*, followed. A mere agreement to refer to arbitration a matter pending before a court cannot be treated as an adjustment of the dispute under O. XXIII, r. 3, corresponding to s. 375, Civil Procedure Code (Act XIV of 1882), though an award consequent on the arbitration may be so treated. MACLEAN, C. J.'s view in *Tincowry Dey* v. *Fakir Chand Dey, I. L. R. 30 Calc. 218*, followed. *Pragdas* v. *Girdhardas, I. L. R. 26 Bom. 76, Brojodurlabh Sinha* v. *Ramanath Ghose, I. L. R. 24 Calc. 908*, and *Lakshmana Chetti* v. *Chinnathambi Chetti, I. L. R. 24 Mad. 326*, distinguished. VENKATACHALA *v.* RANGIAH (1913) **I. L. R. 36 Mad. 353**

——— **O. I, r. 8.**

See MAHOMEDAN LAW—WAQF.
I. L. R. 35 All. 197

——— **O. I, r. 11**—*Defendant, if may be joined as plaintiff—Boná fide mistake.* Where a plaintiff had brought a suit for the recovery of possession of property falsely denying the title of persons whom he had joined as defendants and asserting that an exchange by which he had transferred this property to these defendants had never been acted upon and it was found that the exchange had in fact terminated the plaintiff's title and had been acted on and that he had therefore no *locus standi* to sue the principal defendant: *Held*, on an

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd*

——— O I, r 11—*concld*

application for liberty to join his transferee defendants as plaintiffs that it could not be said that the plaintiff had made a *bona fide* mistake within the meaning of O I r 10 Civil Procedure Code GAJENDRA NATH RAY CHOWDHURY *v* SURYA KANTA RAY CHOUDHURY (1912) **17 C W N 462**

——— O II, r 2

See AGRA TENANCY ACT (II OF 1901) s 34 **I L R 35 All 512**

——— O V, rr 1, 2, O IX, r 13—

——— *Ex parte decree—Appearance of defendant in answer to a preliminary application not equivalent to appearance in answer to the plaint* *Held*, that the fact that before the admission of a suit one of the proposed defendants had appeared by pleader on a miscellaneous application for his appointment as guardian *ad litem* to a minor defendant did not absolve the court from the necessity of serving such defendant when the suit was admitted with a copy of the plaint and notice of the date fixed for hearing GULAB CHAND *v* SHANKAR LAL (1913) **I L R 35 All 163**

——— O V r 15—*Summons—Question of sufficiency of service of summons* The summons in a suit was served on the paternal uncle of the defendant who was a member of the same joint family and lived in the same house with the defendant *Held* that such service was insufficient in the absence of evidence that the defendant himself could not be found MAKHAN DAS *v* MANNU LAL (1913) **I L R 35 All 556**

——— O V, r 17—*Service of summons—Proper service* Where a serving peon was informed when he went to the house where the defendant ordinarily resided that the latter had gone to Vizagapatam in the Madras Presidency and he thereupon affixed a copy of the notice on the outer door of the house and it appeared that the defendant did not return from Vizagapatam till 3 months after the date of service *Held* that the service was properly effected under r 17 O V of the Civil Procedure Code as it was impossible for the peon in the circumstances to effect personal service on the Defendant SITARAM SIVAMI *v* KATANDI PATRA (1911) **17 C W N 999**

——— O VI, r 17—*Amendment of plaint when allowed—New relief prayed barred by limitation—Just prayer no injustice to defendant and no new facts* Under O VI r 17 Civil Procedure Code a petition for an amendment of a plaint based on no new facts and asking for a further relief *viz* recovery of money may be allowed

Das Rupchand v *Rachappa Vithoba* *I L R 33*

——— O VI, r 17—*concld*

Bom 644 651 Suthi Kutti v *Achutan Nair, 21 Mad L J 475* followed *Weldon* v *Neal 19 Q B D 394* distinguished Plaintiff alleged that the defendants were his servants on a monthly pay and had charge of his shop and he claimed that the accounts kept by them in regard to the business were his property and he sued to recover these accounts *Held* that these facts disclosed a cause of action Plaintiff stated even in his original petition that he will file a separate suit afterwards for such amount as the accounts whose recovery was sought for in the plaint might disclose as due from the defendants He afterwards thought it desirable to claim by an amendment, the recovery of Rs 800 which approximately estimated would be the amount due to him stating that he would pay additional court fee if more was actually found due on looking into the accounts *Held* that the amendment prayed for ought to have been allowed SEVUGAN CHETTY *v* KRISHNA AYYANGAR (1913) **I L R 36 Mad 378**

——— O VII, r. 11

See COURT FEE **I L R 40 Calc 615**

——— O VII, r 6

——— *Set off—Claim barred according to lex fori but not according to lex loci contractus* In a suit filed against him in the United Provinces the defendant claimed to set off a debt which though it would have been barred by limitation in the United Provinces, was not barred according to the local law (that of the Punjab) applicable thereto *Held* that the set off claimed was admissible BACHCHAN LAL *v* BANARSI DAS (1913) **I L R 35 All. 238**

——— O IX, r 8—*Appeal—Dismissal for non appearance of appellant—Appellant present but unrepresented and unable to argue the appeal himself—Procedure* On the date fixed for the hearing of an appeal one of the two appellants (the other being a woman) appeared before the Court and applied for an adjournment to enable him to procure the attendance of his pleaders He was called on to argue his appeal but he said he had nothing to say and thereupon the appeal was dismissed on the ground that it had not been supported *Held* that in these circumstances the Court was not justified in dismissing the appeal for want of prosecution but was bound to consider the grounds of appeal and to decide the case on the merits BALDEO PRASAD *v* KUNWAR BAHADUR (1912) **I L R 35 All 105**

——— O IX, rr 8 and 9 O XXII, rr 3 and 9—*Non appearance of plaintiff—Dismissal of suit—Order setting aside dismissal when plaintiff was found to have been dead at the time suit was dismissed—Orders and rules applicable only to defaulters wrongly applied in case of dead party* On the non appearance of the plaintiff in a suit against the respondent an order was made on the 4th of

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **O. IX, rr. 8, 9**—*concld.*

July, 1911, dismissing the suit for default. The plaintiff was in fact dead at the time the order was made, and his son the appellant was engaged in performing his father's funeral ceremonies and was unable to attend Court. These facts were brought to the notice of the Deputy Commissioner in an application made under O. XXII, rr. 3 and 9, of the Civil Procedure Code (Act V of 1908) by the appellant as the heir and legal representative of the plaintiff, which was filed and accepted by the Deputy Commissioner within the time allowed by law and an order was made on the 11th of September setting aside the dismissal of the suit, and substituting the name of the appellant on the record in place of the deceased plaintiff. On an application for revision of the Deputy Commissioner's order of the 11th of September made by the respondent under s. 115 of the Code to the Court of the Judicial Commissioner, that Court reversed the order, and confirmed that decision on review, mainly on the grounds that the order of the 4th of July dismissing the suit was a proper order under O. IX, r. 8, of the Code; that the appellant's application to set aside that order was not within time, and was therefore barred; and that O. XXII, r. 3, of the Code applied only to a still pending suit, and not to one that had been dismissed. *Held*, (reversing the decisions of the Court of the Judicial Commissioner), that these decisions were vitiated by applying to a dead man orders and rules applicable only to mere defaulter. An "abuse of the process of the Court" within the meaning of s. 151 of the Code had occurred by the course adopted in the Judicial Commissioner's Court. Quite apart from that section any Court might rightly have considered itself to possess inherent power to rectify the mistake inadvertently made in dismissing the suit. The order of the Deputy Commissioner setting aside the dismissal was manifestly sensible and correct, and their Lordships restored it, and remitted the case to India to be disposed of on the merits. DEBI BAKHSH SINGH *v.* HABIB SHAH (1913). . **I. L. R. 35 All. 331**

——— **O. IX, r. 13.**

——— *Ex parte decree, application to set aside, to Original Court, after appeal determined by Appellate Court, if and when lies.* Where the plaintiff sued D, his four sons and two nephews on a mortgage executed by D and D's father (now dead) and the suit having been contested by D's nephews only, a decree was made in plaintiff's favour in the presence of D's nephews but *ex parte* against D and his sons directing the sale of a two-thirds of the mortgaged property (being the share of D and his father) and making all the 7 defendants personally liable for the unsatisfied balance, if any, of the mortgage-debt; and against that decree an appeal was preferred by plaintiff wherein he sought to have a decree for the sale of the share of D's nephews as well, and the latter also preferred cross objection against the portion of the decree which made them personally liable; and both appeal and cross-objections were allowed by the High Court: *Held*, that though D and his sons had been joined as respondents in the appeal and a self-contained decree was made therein, as no relief was claimed in the appeal against them, there was still as against D and his sons a subsisting *ex parte* decree over which the Subordinate Judge had control, and he had jurisdiction to entertain an application by D and his sons to set aside the decree. BRIJALALL SINGH *v.* MAHADEO PROSAD (1911).
17 C. W. N. 133

——— **O. IX, r. 13, proviso.**

——— *Decree in favour of contesting defendants and against non-appearing defendants if may be wholly set aside at the instance of latter—Refusal of Court to set aside—Plaintiff, if may ask for the setting aside of whole decree in revision. Semble:* The proviso to r. 13, O. IX of the Civil Procedure Code (Act V of 1908) does not authorise the Court, in setting aside a decree at the instance of defendants against whom it had been obtained *ex parte*, to set it aside in so far as it is in favour of the contesting defendants. ALI AHMED KHAN *v.* C. R. BROWN (1912).
17 C. W. N. 142

——— **O. XX, r. 2**—*Judgment—Judgment written by the judge who heard the case after his transfer from the division and pronounced by his successor in office.* A Judge may pronounce a judgment written but not pronounced by his predecessor in office, and this, notwithstanding that at the time the judgment was written the Judge who wrote it had ceased to be the Judge of the Court in which the case was tried. *Satyendra Nath Roy Chaudhuri* v. *Kastura Kumari Ghatwalin, I. L. R. 35 Calc., 756*, followed. BASANT BIHARI GHOSHAL *v.* SECRETARY OF STATE FOR INDIA (1913) . . . . **I. L. R. 35 All. 368**

——— **O. XX, r. 18**—*Partition—Appeal—Preliminary decree—Subsequent interlocutory order giving directions for preparation of final decree.* In a suit for partition, a preliminary decree was passed and confirmed on appeal. When the case went back to the Court of first instance for the passing of a final decree that Court passed an order directing that actual partition should be made in accordance with certain directions then given by it: *Held*, that no appeal would lie against such an order, but its propriety could be questioned in appeal from the final decree. The Code of Civil Procedure contemplated the preparation of only one preliminary decree, and the order in question could not be regarded as more than an interlocutory order containing directions as to the preparation of the final decree. BHARAT INDU *v.* YAKUB HASAN (1913) . . . **I. L. R. 35 All. 159**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd*

—— **O XXI, r. 2—**

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s 231
I L R 36 Mad. 357

—— **O XXI, r. 2, O. XXXIV, r. 5.**

See EXECUTION OF DECREE.
I L. R. 35 All 178

—— **O. XXI, r 15**

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s 231
I L. R 36 Mad. 357

—— **O XXI, r. 16**—*Execution of decree—Decree for money and costs of suit—Transfer of decree as to costs merely* *Held*, that a decree for payment of a sum of money and for costs of the suit is one and indivisible, and the decree holder cannot transfer the decree so far merely as it may be a decree for costs, retaining the right to execute the decree for the main sum awarded RAM CHANDRA NAIK KALIA *v* ABDUL HAKIM (1913)
I L. R 35 All. 204

—— **O XXI, r. 25**

See ATTACHMENT **I. L R 40 Calc 849**

—— **O. 21, r 57**— *Strike off, meaning of if amounts to dismissal of attachment—Limitation* Where a decree was passed on the 15th April 1897, and on the 22nd February 1909 execution was commenced and it was ordered that the land should be attached and proclamation should be issued, the 15th April being fixed for the date of the proclamation, and on the 15th April the proclamation not having been made owing to laches on the part of the decree holder an order was passed— proclamation not filed, struck off *Held*, that this amounted to a dismissal of the attachment and a fresh application for execution after the 15th April 1909 was out of time MANDHYAN SHEIKIYA *v* BADRAM DALNI (1912)
17 C W. N. 204

—— **O XXI, rr 84, 89, 92**—*Execution of decree—Sale of immovable property—Acceptance of final bid deferred—Application to set aside sale—Limitation* *Held*, that a sale of immovable [illegible] mplete [illegible] al bid [illegible] of 25 [illegible] r 84 of O XXI of the Code of Civil Procedure, 1908 The period of thirty days prescribed by r 92 will not, therefore, begin to run against a person applying under r 89 if for any reason the final bid remains for a time unaccepted by the sale officer MUNSHI LAL *v* RAM NARAIN (1912)
I. L. R. 35 All 65

—— **O. XXI, r. 88**—*Execution of decree—Sale in execution—Pre emption—Title of pre emptor defeasible* *Held*, that a title to a share in undivided immovable property sold in execution of a decree which is still defeasible at the date of a sale in execution, is not sufficient to support a claim for

—— **O XXI, r 88**—*concld*

pre emption under O XXI, r 88, of the Code of Civil Procedure, 1908 *Kamta Prasad v. Mohan Bhagat, I L R 32 All 45*, and *Nabihan Bibi v Kauleshar Rai, 4 All L J 351*, followed ABDUL GHAFUR *v* GHULAM HUSAIN (1913)
I L R 35 All 298

—— **O XXI, r 89**—*Civil Procedure Code (Act XIV of 1882), s 310A— Decree holder—Execution of decree—Auction sale—Application by judgment debtor to set aside sale—Deposit within thirty days—Auction purchaser not a necessary party to the application—Notice to all parties—Rateable distribution claimed by other decree holders—Satisfaction of the decree under which the property was sold* The deposit under O XXI, r 89 of the Civil Procedure Code (Act V of 1908) must be made within thirty days from the date of sale It is not necessary that the notice required to be given under r 92 of the said order should be given within thirty days of the date of sale Once notice has been given under r 89 to all persons affected thereby, the Court has full authority to set aside the sale A decree holder having applied for execution of his decree, the proceedings in execution were transferred to the Collector He issued a proclamation and proceeded with the sale, but before the auction sale took place, he received from the Court intimation of applications made by other decree holders against the same judgment debtor for rateable distribution The Collector inserted references to the applications in his proclamation of sale and the property was subsequently sold Then within thirty days the judgment debtor applied to have the sale set aside under O XXI, r 89 of the Civil Procedure Code (Act V of 1908) on depositing in Court for payment to the purchaser a sum equal to five per cent of the purchase money and for payment to the decree holder the amount specified in the

[illegible] was insufficient because the amount deposited should have been sufficient to satisfy not only

[illegible]

meant that person alone for satisfaction of whose decree the sale had been ordered and did not [illegible]clude other persons who would have a right [illegible] claim rateable distribution out of the sale proceeds under s 73 of the Civil Procedure Code (Act V of 1908) GANESH BAB NAIK *v* [illegible] VAMAN (1912) . . **I. L R 37 [illegible]**

—— **O XXI, rr. 89, 90**—*Application [illegible] latter if may proceed after application [illegible]*

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— O. XXI—*concld.*

former dismissed—Transferee of non-transferable occupancy holding, if may apply. There is no prohibition in the Code against an application being made under r. 90 of O. XXI of the Civil Procedure Code after an application under r. 89 has been made and has been withdrawn or dismissed. Rr. 89 and 90 of the Civil Procedure Code permit of applications by persons who could not have applied under ss. 310A and 311 of the Civil Procedure Code of 1882. BASIRUDDIN *v.* FAIMULLA (1911). **17 C. W. N. 476**

——— **O. XXI, r. 90**—*Attachment before judgment—Property sold in execution—Locus standi of attaching plaintiff to apply to set aside sale.* A plaintiff who has attached immoveable property before judgment, has no present interest in such property and is not entitled to apply under O. XXI, r. 90 to set aside a sale of the property in execution of a decree. *Sewdat Ray* v. *Sree Canto Maity, I. L. R. 33 Calc. 639, 643 : 10 C. W. N. 634, Basiram Malo* v. *Kattyani Debi, I. L. R. 38 Calc. 448 : 15 C. W. N. 795*, relied on. JOGENDRA NATH CHATTERJEE *v.* MONMOTHA NATH GHOSH (1912). **17 C. W. N. 80**

——— **O. XXI, rr. 90, 92**—*Application to set aside sale made before the new Code came into force—Fraud, general allegation of—Second appeal.* The fact that the execution-sale took place and the application to set it aside on the ground of fraud was made before the new Code of Civil Procedure came into operation does not make the order passed on the application after the new Code came into force subject to a second appeal under the provisions of the old Code. General allegations of fraud unaccompanied by particulars are insufficient even to amount to an averment of fraud of which any Court ought to take notice. *Wallingford* v. *The Mutual Society, L. R. 5 A. C. 685, 697*, followed. RAJ MOHAN PAL *v.* GOVINDA CHANDRA PAL (1912) . . . **17 C. W. N. 524**

See ALSO BHADRESWAR GOLOI *v.* BISHNU CHARAN SEN (1910). **17 C. W. N. 525n**

——— **O. XXII, r. 10**—*Assignee's application to be substituted for plaintiff, and to add plaintiff's son as defendant—Ex parte order upon unsworn petition—Ex parte order if may be recalled—Notice to parties interested, necessity of.* A judicial order which may possibly affect or prejudice any party cannot be finally made unless he has been afforded an opportunity to be heard. When a person alleging to be the assignee of the interests of the plaintiff applied to be substituted in his place, and prayed that the plaintiff and his son who was no party to the suit be made defendants, and the Court made the order as prayed *ex parte* and without notice to the plaintiff: *Held*, that all orders of this character made *ex parte* are subject to the implication that they may be revoked at the instance of any party prejudicially affected thereby, and the Court has inherent power to give such

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— O. XXII—*concld.*

directions as the justice of the case may require. That it was incumbent on the Court to reconsider the order in so far as it directed the substitution of the applicant in the place of the plaintiff, when the latter preferred objections to the order. That the addition of the plaintiff's son who was no party to the suit (though he himself had consented to be so added) could not be made without hearing the defendant as the applicant appeared, by that means, to be really seeking a relief not included in the plaint as originally framed. *Semble :* Applications of this character should be supported by an affidavit. AJANT SINGH *v.* F. T. CHRISTIEN (1912) . . . . **17 C. W. N. 862**

——— **O. XXIII, r. 1**—*Trial of a suit—Close of the trial after recording all evidence produced by both parties—Time given to the plaintiff to produce more documents—Plaintiff's application to withdraw the suit with permission to bring a fresh one—Grant of the permission for fresh suit—Material irregularity in the exercise of jurisdiction.* After the case for both the plaintiff and the defendant had been closed and all their witnesses had been examined, the Court gave time to the plaintiff to adduce documents to counteract the effect of the documents already produced by the defendant. On the plaintiff's inability to adduce the documents on the appointed day, he applied for leave to withdraw from the suit with permission to file a fresh one on the same cause of action and the Court having passed an order granting the leave: *Held*, setting aside the order, that the Court acted with material irregularity in the exercise of its jurisdiction. The hearing was finished and it was improper to allow plaintiff to try and produce documents to counteract the defendant's documents. The plaintiff's failure to produce the documents was not a sufficient ground to put the defendant to the trouble and annoyance of a fresh suit. BAI KASHIBAI *v.* SHIDAPA ANNAPA (1913). **I. L. R. 37 Bom. 682**

——— **O. XXIII, r. 3.**

See DEKKHAN AGRICULTURISTS' RELIEF ACT . . **I. L. R. 37 Bom. 614**

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879) s. 15 B. **I. L. R. 37 Bom. 614**

——— **O. XXXIV, r. 1 ; O. 1, r. 9**—*Parties to suit—Mortgage—Joint mortgage of separate properties—Suit barred as against one mortgagee—Remaining property liable for whole debt.* The separate properties of two mortgagors were jointly mortgaged to secure one debt. The mortgagee sued for sale just within limitation, making one of the heirs of one mortgagor a party defendant, and stating that nothing had been heard of the other for twenty-five years. In the written statement it was pleaded that this heir was alive, but by that time the suit as against him was time-barred : *Held*, that the unimpleaded

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd*

——— O XXXIV—*concld*

heir of the mortgagor was not a necessary party to the suit, and that the suit might be proceeded with against the other representative of the mortgagor and his separate property for the whole amount due on the mortgage *Jai Gobind* v *Jai Ram All W N (1898) 120*, followed *Gendan Lal* v *Babu Ram, 9 All L J 86* distinguished *Imam Ali* v *Baij Nath Ram Sahu I L R 33 Calc 613 Hakim Lal* v *Ram Lal 6 C L J 46 Krishna Ayyar* v *Muthukumarasawmija Pillai, I L R 29 Mad 217 Haro Kumari* v *Eastern Mortgage Co, 7 C L J 274* and *Debendra Nath Sen* v *Mir a Abdul Samad 10 C L J 150*, referred to SANWAL SINGH *v* GANESHI LAL (1913)
I L R 35 All 441

——— *O XXXIV, r 1—Mortgage—Suit for sale—Intentional non joinder of subsequent mortgagee—Effect of such non joinder* Subsequently to the execution of a mortgage of a 4 biswa zamindari share in favour of A S the mortgagor executed a further (usufructuary) mortgage of a portion of the same share in favour of A S and his brother N S A S brought a suit for sale on the earlier mortgage but without making N S a party thereto *Held* that the effect of the non joinder of N S would not be the total dismissal of the suit but only of so much of it as related to that portion of the property which was covered by the subsequent mortgage ALAM SINGH *v* GOKAL SINGH (1913) **I L R. 35 All. 484**

——— **O XXXIV, r 5**

See COURT FEES ACT (VII OF 1870) SCH I ART 1 SCH II, ART 11
I L R. 35 All 476

——— **O XXXIV, r 6**

See MORTGAGE **I. L R 40 Calc 342**

——— O XXXIV, r 8—*Decree for sale on a mortgage conditioned on redemption of prior mortgages—Power of Court to extend time for payment of redemption money* When a suit for sale by a subsequent mortgagee became by reason of the intervention of a prior mortgagee also a suit for redemption of the prior mortgage and a decree was passed accordingly, it was *held* that the Court had power under O XXXIV, r 8, to extend the time for payment of the sum found necessary to redeem the prior mortgage the plaintiffs having through a *bona fide* mistake paid into Court an insufficient amount KALIAN v SADHO LAL (1912)
I. L R 35 All 116

Execution for costs by attachment of part of the mortgaged property Certain usufructuary mortgagees suing for possession of the mortgaged property, which had not been delivered to them, obtained a decree for possession and for costs In execution of their decree for costs the mortgagees applied for attachment of part of the mortgaged property *Held*, that this application was not barred by the provisions of O XXXIV r 14 of the Code of Civil Procedure 1908 *Kharajmal* v *Daim, I L R 32 Calc 296* distinguished *Muhammad Abdul Rashid Khan* v *Dilsukh Rai I L R 27 All 517* referred to HARIBANS RAI *v* SRI NIWAS NAIK (1913) **I L R 35 All 518**

——— **O XXXIX, r 1, O XLIII, r 1**—*Temporary injunction—Order refusing injunction—Appeal* *Held* that an appeal lies from an order refusing as well as from one granting a temporary injunction LACHMI NARAIN *v* RAM CHARAN DAS (1913) **I L R 35 All 425**

——— O XXXIX, r 1—*Civil Procedure Code (Act XIV of 1882) s 244—Temporary injunction—What Courts bound to consider before granting—Debutter estate—Decision against previous shebait, effect of on successive shebaits—Order passed in execution case disallowing objection effect of, on successive shebaits—Contingent right—Suit for declaration of if lies* The appellants obtained a decree which was ultimately affirmed by the Privy Council against P the *shebait* representing a *debutter* estate for expenses incurred by their father who was the *shebait* before P in carrying on the worship of the idol and in the course of a litigation for establishing his title to the *shebaitship* which was challenged by P An application for execution of this decree was opposed by P who suggested that the decree holders should get Rs 1 500 per year out of the rents and profits of the *debutter* estate but the Subordinate Judge disallowed the objection on 3rd December 1910 On 12th August 1911 the respondents the brother's son and the brother's grandson, respectively, of P, instituted a suit against the appellants and other members of the family making P also a party defendant for a declaration of their future rights to the *debutter* property as also for a declaration that that property was not liable to sale in execution of the decree obtained by the appellants. An application made on the same day to have the execution of the said decree stayed was refused

Judge granted the injunction *Held* that the order granting injunction was wrong and improper Before granting the injunction the Court was bound to consider how far there was any possibility of plaintiffs succeeding in the suit *Preston* v *Luck, I R 27 Ch D 497 505*, relied on The decision in the previous suit which was contested by P as *shebait* of the *debutter* estate was binding on all successive *shebaits* The order passed by the Subordinate Judge in the execution case on the 3rd December 1910 was an order under the provisions of s 244, Civil Procedure Code, 1882,

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **O. XXXIX**—*concld.*

and would be binding on all successive *shebaits*. The contingent interest which the plaintiffs claimed in *shebaitship* was very remote and a person cannot sue for a declaration of his right unless he has an existing right and a mere contingent right which may never ripen into an actual existing right is not sufficient to ground an action for such declaration. NAGENDRA NATH MUKERJEE *v.* PROBAL CHANDRA MUKERJEE (1912). **17 C. W. N. 964**

——— **O. XL, r. 1.**

See RECEIVER . **I. L. R. 40 Calc. 882**

——— **O. XLI, r. 10, and s. 129**—*Bombay High Court Rules, r 725—Deposit of security by appellant residing outside British India in an appeal from the original civil jurisdiction of the Bombay High Court, rules governing.* The Bombay High Court in its original civil jurisdiction is not bound to demand security from an appellant residing outside British India for the costs of the appeal or of the original suit or of both as provided in O. XLI, r. 10, of the Civil Procedure Code. The provisions contained in r. 725 of the Bombay High Court Rules deal with the deposit of security in all appeals from the original jurisdiction of the High Court, and are inconsistent with the provisions of O. XLI, r. 10, of the Civil Procedure Code and accordingly by virtue of s. 129 of the Civil Procedure Code, O. XLI, r. 10 does not apply. *Semble* · It is not clear whether it is imperative on the Bombay High Court, in cases where O. XLI, r. 10, does apply, to demand security from an appellant residing outside British India for the costs of both the appeal and the original suit. BEHRAM JUNG *v.* HAJI SULTAN ALI SHUSTRY (1912).
I. L. R. 37 Bom. 572

——— **O. XLI, r. 11**—*Civil Circular, issued by the Bombay High Court, No. 51—Summary dismissal of appeal—Necessity of writing a judgment.* A lower Court of Appeal must write a judgment when it dismisses an appeal under O. XLI, r. 11 of the Civil Procedure Code (Act V of 1908), as provided by Civil Circular 51 issued by the High Court, Bombay. *Tanaji Dagde* v. *Shankar Sakharam, I. L. R. 36 Bom. 116,* overruled. HANMANT *v.* ANNAJI HANMANTA (1913) **I. L. R. 37 Bom. 610**

——— **O. XLI, r. 20 ; O. XXII, r. 10 ; O. I, r. 10.**

See PARTIES . **I. L. R. 40 Calc. 323**

——— **O. XLI, r. 22**—*Cross-objections, who may file and against whom—Co-respondent, cross-objections not ordinarily allowed as against.* The ordinary rule is that the cross-objections provided for by O XLI, r. 22 of the Code of Civil Procedure are cross-objections which are aimed against an appellant from a decree of a lower Court and are not cross-objections against a co-respondent. In any case such cross-objections will not be allowed as against a co-respondent where the respondent could have referred them by way of appeal. NURSEY VIRJI *v.* ALFRED H. HARRISON (1913).
I. L. R. 37 Bom. 511

——— **O. XLI, r. 23**—*Decision of first Court not on a preliminary point—Power of appellate Court to remand.* There are cases in which an order of remand may be made even where the disposal has not gone on a point which can strictly be called a preliminary point. *Kuppalan* v. *Kunjuvalli, 9 Mad. L. T. 373,* followed. A case in which there was no regular hearing of a matter by the first Court and the evidence on which the disposal of the case was made by that Court was not placed on record, is a fit one for remand. JAMBULAYYA *v.* RAJAMMAL (1913).
I. L. R. 36 Mad. 492

——— **O. XLI, r. 23 ; O. XLIII, r. 1 (u)**—*Suit dismissed for default of appearance, but restored by Appellate Court—Remand—Appeal.* *Held,* that no appeal would lie from an appellate order directing that a suit which had been dismissed because neither party had appeared should be restored to the file of pending cases and heard. WAHID-UN-NISSA *v.* KUNDAN LAL (1913) . . . . **I. L. R. 35 All. 427**

——— **O. XLI, r. 25**—*High Court, if bound by opinion of Bench expressed in remanding a case.* Where a Bench of the High Court, in remanding an appeal for a finding under s. 566 of the Civil Procedure Code of 1882, had expressed an opinion as to the way in which the case should be decided upon the finding, the Bench before which the appeal comes up for final disposal after the finding of the Court below has arrived, will not be bound by that opinion. *Bonchari Ghosh* v. *Ainuddin Biswas, 24 W. R. 137, Lachman Prasad* v. *Jamna Prasad, I. L. R. 10 All. 162, Mubarak Hossain* v. *Bihari, I. L. R. 16 All. 306,* referred to. GANENDRA NATH RAY CHOUDHURY *v.* SURYA KANT RAY CHOUDHURY (1912).
17 C. W. N. 462

——— **O. XLI, r. 33**—*Civil Procedure Code (Act XIV of 1882), ss. 562, 564—Repeal of s. 564 in the new Code—Effect of repeal—Remand order by the Court of appeal.* In a suit to redeem a mortgage, the first Court took accounts between the parties and decreed redemption. The lower Appellate Court having found that there were some errors in the taking of accounts and that a piece of land wrongly taken to be in the mortgagee's possession, reversed the decree and remanded the suit for trial to the first Court. On appeal from the order of remand: *Held,* setting aside the order of remand, that an Appellate Court could remand a case to the trial Court only when the latter had disposed of the suit upon a preliminary point and the decree was reversed in appeal. *Held,* further, there was no reason why the first Court's decree as such should have been reversed, for according to both Courts, the possession was to be restored to the plaintiffs, and the only difference between

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd*

——— **O. XLI**—*concld*

the two was in small particulars of accounts which could have been met by a slight re adjustment of the decree *Per* CURIAM The removal of s 564 of the Civil Procedure Code of 1882 has apparently no other object but to withdraw those restrictive provisions of the section which in practice had been found embarrassing, such re strictions occurring for instance in cases where the Appellate Court has allowed an amendment of the pleadings, or has added a party to the record NAROTTAM RAJARAM *v* MOHANLAL KAHANDAS (1912) I L R 37 Bom 289

——— **O XLIII, r 1, cl** (*a*)—*Valuation of final*
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per
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interfering with such right was valued at Rs 1 100 but the Court having found the value to be Rs 790 returned the plaint for presentation to the proper Court *Held* that an appeal lay against the order under cl (*a*) of r 1 of O XLIII of the Civil Procedure Code S 12 of the Court Fees Act has no application to a case where the valuation though it may indirectly affect the amount of Court fees payable on the plaint is necessary for the purpose of determining the jurisdiction of the Court to entertain the suit *Brojo Kumar* v *Eshan Chandra, 3 C I R 79* referred to PEARI SHA *v* SURUJMAL MARWARI (1912) 17 C W N 503

——— **O XLIII, r 1, cl** (*s*)—*Mortgage suit—Appointment of Receiver at mortgagee s in stance under terms of mortgage deed—Court s order on Receiver to pay money to mortgagor to enable him to appeal if appealable—Interest non payment of ground for appointing Receiver* When a mortgage deed provided for the appointment at the instance of the mortgagees of a Receiver in circumstances specified in the deed and laid down the mode in which the rents and profits were to be distributed by the Receiver, and in pursuance of these provisions a Receiver was appointed with powers to dispose of the rents and profits in a certain manner in the

that an appeal lay against the order under O XLIII, r 1, cl (*s*) of the Civil Procedure Code *Mohunt Anand Das* v *Ram Perkash Das, 14 C W N 183* relied on That the Receiver not having had power to make the payments in question either under the mortgage deed or the terms of his appointment, the Subordinate Judge was wrong in making the order The power given by Court to the Receiver to institute or defend suits re garding the properties whether for collection of

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd*

——— **O XLIII**—*contd.*

rents or for any other purpose or the provision in the mortgage deed that pecuniary grants might be allowed for law expenses did not justify the orders of the Subordinate Judge for payment to the judgment debtor until after sums had been deposited in Court sufficient to recover interest due on the mortgage debt as required by the mort gage deed and the terms of appointment of the Receiver The mortgagee in this case not having had any payment as interest since the loan was made was entitled under the provisions of the law to apply for the appointment of a Receiver pending the disposal of the suit EASTERN MORT GAGE AND AGENCY COMPANY LD *v* FAKURUDDIN MOHAMED CHOUDHURY (1912) 17 C W N 16

——— **O XLIII, r 1** (*r*)—*Temporary injunc tion—Order refusing injunction if appealable* An appeal lies against an order refusing a temporary injunction *Reasut Hussain* v *Hadjee Abdullah I L R 2 Calc 131* referred to HARI LAL *v* PRAYAG RAM (1913) 17 C W N 996

——— **O XLVII, r 1**—*Order setting aside sale, alleged to be made by consent of parties—Decree holder alleging that order made in his absence—Review if may be granted* Where a sale in execution of a decree was set aside upon the strength of a peti tion of compromise to which the decree holder

the order was made and that as a matter of fact what appears to be a consent order was in essence an *ex parte* order *Held* that it was open to the decree holder under these circumstances to apply for review under r 1 O XLVII of the Civil Proce dure Code HAKIMGIR *v* BASDEO SAHI (1911) 17 C W N 631

——— **O XLVII, rr 2, 7, sub r 1, cl** (*1*)—*Review of order setting aside sale by another officer —Appeal after confirmation of sale, if lies where final order not appealable* Where an application for review of an order of a District Judge upon a ground other than the discovery of new or important matter or evidence or the existence of a clerical or arith

party and the District Judge himself passed several orders in the case relating to the postponement of the hearing and analagous matters, but died before the case could be heard on the merits, and the review application was subsequently granted by the successor in office of the District Judge *Held*, that the order granting the review was in contravention of r 2 of O XLVII of the Civil Procedure Code, and should be set aside Where an order setting aside a sale was set aside on review and the sale confirmed *Held*, that an appeal against the order passed on review preferred after the sale was confirmed, was not incompetent An appeal against an order granting a review would

CIVIL PROCEDURE CODE (ACT V OF 1908)—*concld.*

——— **O. XLVII**—*concld.*

lie under sub-r. 1 of r. 7 of O. XLVII even where no appeal would lie against the final decree disposing of the case. SHAMSER ALI *v.* JAGANNATH (1912)
17 C. W. N. 403

CLERK.

——— **relinquishment by, of employment without consent of master.**

See MASTER AND SERVANT.
I. L. R. 35 All. 132

CODICIL.

See WILL . . **I. L. R. 40 Calc. 192**

COERCION.

See VOLUNTARY PAYMENT.
I. L. R. 40 Calc. 598

COGNIZANCE.

——— *Police report—Case made over to another Magistrate for enquiry and report—Criminal Precedure Code (Act V of 1898), ss. 173, 190 (1) (b)—Practice.* Where a Magistrate, upon receiving a police report under s. 173, does not take cognizance of the case under s. 190 (*1*) (*b*), which he is perfectly competent to do, but makes it over for enquiry and report to an Honorary Magistrate, he acts contrary to the provisions of the law. ABDULLAH MANDAL *v.* EMPEROR (1913)
I. L. R. 40 Calc. 854

COLLECTOR.

\ *See* ABKARI ACT (V OF 1878), ss. 32, 67 . . **I. L. R. 37 Bom. 101**

See CIVIL PROCEDURE CODE (ACT V OF 1908), ss. 3, 115.
I. L. R. 37 Bom. 114

See CIVIL PROCEDURE CODE (ACT V OF 1908), SCH. III, s. 7 (*1*) (*b*), ss. 69, 70 . . **I. L. R. 37 Bom. 32**

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 68, O. XXI, R. 100.
I. L. R. 37 Bom. 488

See COURT OF WARDS ACT (BOM. ACT I OF 1905), s. 3 (*c*).
I. L. R. 37 Bom. 313

See HEREDITARY OFFICES ACT (BOM. ACT III OF 1874), ss. 11, 11A.
I. L. R. 37 Bom. 37

See PENSIONS ACT (XXIII OF 1871), s. 4 . . **I. L. R. 37 Bom. 91**

See REVENUE JURISDICTION ACT (BOM. ACT X OF 1876).
I. L. R. 37 Bom. 542

——— **sale by.**

See ADVERSE POSSESSION.
I. L. R. 40 Calc. 173

——— *Jurisdiction—Complaint to Collector of the District under s. 58 (3) of the Bengal Tenancy Act (VIII of 1885)—Transfer of inquiry to Subdivisional Officer for disposal—Deputy Collector—Jurisdiction of Subdivisional Officer to hold such inquiry and to direct a prosecution for fabrication of false evidence—Bengal Tenancy Act, ss. 3 (16), 58 (3)—Government Notification of 19th September 1910—Reg. IX of 1833, ss. 20 and 21—Criminal Procedure Code (Act V of 1898), s. 476.* Under s. 3 (*16*) of the Bengal Tenancy Act and Government Notification of the 19th September 1910, a Subdivisional Officer is a "Collector" and is authorized to hold an inquiry under s. 58 (*3*) of the Bengal Tenancy Act. A Collector of the District has power, on complaint made to him, to transfer such inquiry for disposal to a Subdivisional Officer who is, under ss. 20 and 21 of Reg. IX of 1883, subordinate to the Collector, and is required to perform all the duties assigned to him by that functionary. Where, therefore, a complaint under s 58 (*3*) of the Bengal Tenancy Act was made to the Collector of the District and transferred by him for disposal to the Subdivisional Officer who found that certain rent-receipt books, filed in the course of the inquiry, had been fabricated: *Held,* that the latter had jurisdiction, under s. 476 of the Criminal Procedure Code, to direct a prosecution of the offenders for offences under ss. 193 and 196 of the Penal Code. PHANINDAR SINGH *v.* EMPEROR (1913)
I. L. R. 40 Calc. 465

COLLECTOR OF RANGOON.

——— **reference by.**

See APPEAL TO PRIVY COUNCIL.
I. L. R. 40 Calc. 21

COLLISION.

See RAILWAYS ACT (IX OF 1890), s. 101.
I. L. R. 37 Bom. 685

COLLUSION.

See CONTRIBUTORY NEGLIGENCE.
I. L. R. 37 Bom. 575

COLONIAL PROBATES ACT (55 & 56 VICT., c. 6).

See LETTERS OF ADMINISTRATION.
I. L. R. 40 Calc. 74

COMMISSIONER.

——— **power of.**

——— *Revenue Commissioner, power to review order made by, annulling sale for arrears of revenue—Act XI of 1859, s. 25, as amended by Bengal Act VII of 1868, s. 2. Held* (affirming the decisions of the Courts in India), that a Revenue Commissioner acting under Act XI of 1859, as amended by Bengal Act VII of 1868, had, under the circumstances, no power to review his order setting aside a sale held for arrears of revenue. BAIJNATH RAM GOENKA *v.* NAND KUMAR SINGH (1913) . . . **I. L. R. 40 Calc. 552**

COMMISSIONER OF PARTITION.

——— **sale by.**

See REVIEW . **I. L. R. 40 Calc. 140**

COMMISSIONER OF POLICE.

——— power of

See PROCESSION . I. L. R. 40 Calc. 470

COMMITMENT TO SESSIONS.

See JURISDICTION OF CRIMINAL COURT
I. L R. 40 Calc. 360

COMMITTEE.

See PARTIES—RELIGIOUS ENDOWMENT
I. L R 40 Calc 323

COMMON MANAGER.

See ACCOUNT, SUIT FOR
I. L. R 40 Calc. 108

——— *Bengal Tenancy Act (VIII of 1885), ss 95—98—Suit against a Common Manager for general accounts, after accounts passed by the District Judge, whether maintainable—Position of a Common Manager.* A Common Manager, appointed under s 95 of the Bengal Tenancy Act by the
create
office
of the Act, is in a position analogous to that of a Receiver appointed by the Court, and is entitled to the same protection, for the period during which he exercises his duties within the powers given to him by the Act, as a Receiver appointed by the Civil Court No suit by a co owner to render a general account for the whole period of
Common
he provi
regularly
submitted accounts for the period of his management to the District Judge and which accounts

at the time, were not included in the account, or with due enquiry might have discovered were not included in the account, except with the previous sanction of the District Judge *Khitish Chandra Acharjya Choudhury* v *Osmond Beeby, I. L R 39 Calc 587, 16 C W N 516*, and *Mahomed Faiz Choudhury* v *Upendra Lal Singh Roy, 2 Ind Cas 597*, distinguished NABA KISHORE MANDAL v. ATUL CHANDRA CHATTERJI, (1912)
I L R. 40 Calc. 150

COMPANIES ACT (VI OF 1882)

in issue not made ground of attack in former suit—Res judicata—Civil Procedure Code, 1882, s 13 The provisions of the Indian Companies Act (VI of 1882) as regards the incorporation of Companies are the same as those contained in the Imperial Act of 1862, except that it is specially provided in s. 40 of the Indian Act that it is not the duty

COMPANIES ACT (VI OF 1882)—*contd*

——— s 6—*concld*

of the Registrar to require evidence as to whether the subscribers to the Memorandum of Association are competent to contract S 6 of the Act provides that " any seven or more persons . . . . may, by subscribing their names to a Memorandum of Association and otherwise complying with the requisitions of this Act in respect of registration, form an incorporated Company, etc." And s 41 enacts that " a certificate of the incorporation of any Company given by the Registrar shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with " The Memorandum of Association of a proposed Company was signed before the Registrar by two adult persons, and also by a person who under the Guardians and Wards Act (VIII of 1890), had been duly appointed by the Court guardian of five minors, the guar-
minor;
the due
. suit in
which it was objected, *inter alia*, that the Company was not properly constituted, the Memorandum of Association not having been signed by the required number of seven subscribers *Held* (reversing the decision of the Chief Court of Lower Burma on its Appellate Side), that assuming the conditions of registration were not duly complied with, the certificate of incorporation was conclusive for all purposes, and the Court could not go behind it and consider any alleged defects in the formation or constitution of the Company *In re Barned's Banking Company. Peel's Case, L R 2 Ch App 674, per* Lord Cairns L J, and *Oakes* v *Turquand, L R 2 E & Ir. App 325, per* Lord Chelmsford L C, followed But apart from the English decisions, the use of the word " otherwise " in s 6 of Act VI of 1882 showed that the statutory condition that the Memorandum of Association must be signed by seven or more persons was as much a condition of registration as any other to be found in the Act which was preliminary to registration and apparently essential *Held*, also, that the issue as to the invalidity of the Company might and ought to have been made a ground of attack in a former suit brought by the same plaintiff against the same defendants in 1902 which had been dismissed All the facts on which the present suit was based were known to the plaintiff, and were stated at length in the proceedings in the former suit No further evidence would have been needed Nothing was wanting but the addition of an issue on the point. The present suit as regards that question was therefore barred as *res judicata* under s. 13, Explanation 2, of the Civil Procedure Code, 1882. *Kameswar Pershad* v. *Rajkumari Ruttan Koer, I L R 20 Calc. 79, L R. 19 I. A. 234*, followed. MOOSA GOOLAM ARIFF v EBRAHIM GOOLAM ARIFF (1912)
I L R. 40 Calc 1

——— s. 74—*Piracy—Criminal Procedure Code, s. 530—Summary jurisdiction—Power of*

I

COMPANIES ACT (VI OF 1882)—*concld.*

——— s. 74—*concld.*

summarily offences under the Indian Companies Act. There is nothing in law to prevent a Magistrate from trying summarily offences under the Indian Companies Act, 1882. *Held*, also, that the penalty provided by s. 74 of the Indian Companies Act, 1882, is a fixed and not a maximum penalty. *Queen-Empress* v. *Moore, I. L. R. 20 Calc. 696*, referred to. EMPEROR *v.* DINA NATH (1913) . . . **I. L. R. 35 All. 173**

——— s. 169—*Company—Winding up—Appeal—Limitation—Notice.* The provisions of s. 169 of the Indian Companies Act, 1882, as to service of notice of appeal are imperative, and if the requisite notice has not been served within three weeks from the date of the order complained of and the time for service has not been extended by the Appellate Court, the appeal cannot be heard. G. J. BOWER *v.* IMPERIAL BANK, LIMITED (1913) . **I. L. R. 35 All. 177**

COMPANY.

——— formation of.

See COMPANIES ACT, 1882, ss. 6, 40, 41.
I. L. R. 40 Calc. 1

——— *Winding up—Shares applied for subject to a condition, and partly paid for—Condition not fulfilled—Resolution of company to refund part payment—Position of applicant as regards winding up proceedings.* A company started in Meerut in 1904, with objects of a very general nature, proposed in 1906 to erect a mill at Fyzabad, and accordingly issued a prospectus and invited the public to subscribe the necessary capital. On the faith of this prospectus one *M* applied for shares, but added to his application a condition to the following effect :—" These shares are only subscribed on the condition that any mill is started in the suburbs of Fyzabad." The company, however, found that they could not raise the necessary funds to start a mill at Fyzabad, and therefore passed a resolution that the money already subscribed for that purpose should be refunded. But before this was done the company went into liquidation. *Held*, that *M* was in the circumstances not a member of the company, but a creditor and entitled to get back what he had already paid. MAHENDRA GOPAL MUKERJI *v.* LACHMAN PRASAD (1913) **I. L. R. 35 All. 538**

COMPENSATION.

See COMPENSATION-MONEY.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 250.
I. L. R. 37 Bom. 376

See LAND ACQUISITION.
I. L. R. 40 Calc. 64

See LAND ACQUISITION ACT (I OF 1894), ss. 3 (*b*), 11 AND 31 (*1*) AND (*2*).
I. L. R. 37 Bom. 76

See LAND ACQUISITION ACT (I OF 1894), s. 30 . . **I. L. R. 35 All. 9**

COMPENSATION—*concld.*

——— apportionment of.

See LAND ACQUISITION ACT (I OF 1894).
I. L. R. 36 Mad. 395

——— for improvements.

See HINDU WIDOW.
I. L. R. 40 Calc. 555

——— principles of apportionment of.

See LAND ACQUISITION ACT (I OF 1894)
I. L. R. 36 Mad. 395

——— right to.

See MALABAR TENANTS' IMPROVEMENTS ACT (MAD. ACT I OF 1900).
I. L. R. 36 Mad. 410

COMPENSATION MONEY.

——— withdrawal of.

See SHEBAIT . **I. L. R. 40 Calc. 895**

COMPLAINANT.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), ss. 248, 258, 345.
I. L. R. 37 Bom. 369

COMPLAINT.

See COLLECTOR . **I. L. R. 40 Calc. 465**

See CRIMINAL PROCEDURE CODE, ss. 203, 437 . . **I. L. R. 35 All. 78**

See JURISDICTION OF CRIMINAL COURT.
I. L. R. 40 Calc. 360

See PENAL CODE (ACT XLV OF 1860), ss. 182, 193 . **I. L. R. 35 All. 102**

——— dismissal of.

See CRIMINAL REVISION.
I. L. R. 40 Calc. 41

——— *Jurisdiction to direct a prosecution in the absence of any judicial proceeding—Order not made independently, but on the suggestion of the District Magistrate—Complaint—Preliminary inquiry without the existence of reasons for doubting its truth—Omission to record reasons—Permission given to accused to cross-examine and adduce defence evidence—Penal Code (Act XLV of 1860), s. 211—Criminal Procedure Code (Act V of 1898), ss. 202 and 476—Practice.* Where the petitioner's case was disposed of by the acquittal of the accused, on the 1st August, by a Magistrate who did not then take action under s. 476 of the Criminal Procedure Code, but proceedings thereunder were taken, on the 9th August, and an order made, on the 23rd, by another Magistrate, who had then no seisin of the case, and the District Magistrate having expressed a doubt as to the jurisdiction of the latter and having considered that such order should be passed by the Magistrate who tried the original case, such Magistrate thereupon, purporting to act under s. 476, directed the prosecution of the petitioner, under s. 211 of the Penal Code, on the 16th September: *Held*,

COMPLAINT—*contd*

(i) that the order of the 23rd August was without jurisdiction as there was no judicial proceeding of any kind before the Magistrate who passed it (ii) that the order of the 16th September was bad in law, as the trying Magistrate had not considered it necessary to take action under s 476 when he acquitted the accused in the original case and did not exercise an independent judicial opinion in passing it a month and a half later at the instance of the District Magistrate There may be cases *in which a Court does not think it neces*sary in the public interest to take action under s 476 of the Code and allows the injured person to seek redress by granting sanction and in such a case it is not necessary that the order should be passed at or near the time of the disposal of the original case When a complainant prefers a complaint and supports it by his oath he is entitled to be believed unless there is some apparent reason for disbelieving him and he is entitled to have the persons complained against brought to trial When there is no reason whatever for disbelieving the truth of the complaint the Magistrate has no jurisdiction to act under s 220 The accused should not be made a party to a proceeding under s 202, nor allowed to cross examine the prosecution witnesses or to adduce evidence for the defence *Baidya Nath Singh* v *Wispratt I L R 14 Calc 141*, approved *Emperor* v *Tanuk Lal Chowdhuri* (unreported) disapproved BHIM LAL SAH v EMPEROR (1912) **I L R 40 Calc 444**

COMPROMISE

See CIVIL PROCEDURE CODE (ACT XIV OF 1882) s 462
I L R 36 Mad. 295

See DEKKHAN AGRICULTURISTS RELIEF ACT (BOM XVII OF 1879) s 15B
I L R 37 Bom 614

See HINDU LAW—JOINT FAMILY
I L R 35 All. 428

See HINDU LAW—WIDOW
I L R 35 All 240

See SALE **I L R 35 All 168**

——— forbidden by law

See AGREEMENT AGAINST PUBLIC POLICY
I L R 40 Calc 113

COMPROMISE DECREE

See REVIEW APPLICATION FOR
I L R 40 Calc 541

COMPULSION

——— money paid under

See VOLUNTARY PAYMENT
I L R 40 Calc 598

CONCURRENT SENTENCES

See APPEAL **I L R 40 Calc. 631**

CONDITIONAL ADOPTION

See HINDU LAW—ADOPTION
I L R 37 Bom 251

CONFESSION

See EVIDENCE ACT (I OF 1872) s 91
I L R 35 All. 260

——— ——— ——— *Record of confession—Questioning the accused regarding its voluntariness at the end of the statement—Criminal Procedure Code (Act V of 1898), s 164—Confession partly false evidentiary value of* Where an enquiry as to the voluntary character of the confession is made by the Magistrate not at the commencement but at the end of the statement by the accused the defect is merely one of form If a confession is found to be false in part viz., as to the justifying motives for an offence it does not follow that the rest of it relating to the commission of the offence must be rejected Where the entire statement of a prisoner has been given in evidence any part of it may be contradicted by the prosecution and if sufficient grounds exist, *the Court may accept the incriminatory and reject* the exculpatory portions *Rex* v *Higgins 3 C & P 603* *Rex* v *Clewes 4 C & P 221* *Rex* v *Steptoe, 4 C & P 397*, referred to PULIN TANTI v EMPEROR (1913) **I L R 40 Calc 873**

CONSEQUENTIAL RELIEF

See COURT FEE
I L R 40 Calc. 245, 615

CONSIDERATION

See EVIDENCE ACT (I OF 1872), s 92
I L R. 35 All. 558

——— failure of

See LIMITATION ACT (IX OF 1908) SCH I, ARTS 97 62 **I L R 37 Bom. 538**

CONSPIRACY TO PROSECUTE MALICIOUSLY

——— suit for

See LIMITATION **I L R 40 Calc 898**

CONSTRUCTION OF AGREEMENT

See MAHA BRAHMAN
I L R. 35 All 412

CONSTRUCTION OF DOCUMENT

See HINDU LAW—PARTITION
I L R 35 All 337

See WILL **I L R 35 All. 211**

CONSTRUCTION OF STATUTES

See DEFAMATION **I L R. 40 Calc 433**

See STATUTE CONSTRUCTION OF

——— ——— Where a later Act of

if possible RANGACHARYA v DASACHARYA (1912)
I L R 37 Bom 231

CONSTRUCTION OF WILL

See HINDU LAW—ADOPTION
I L R 37 Bom 107

CONSTRUCTION OF WILL—*concld.*

See NAIKINS . **I. L. R. 37 Bom. 116**

See SUCCESSION ACT (X OF 1865) . **I. L. R. 37 Bom. 644**

CONTEMPT OF COURT.

——— *High Courts in India made Courts of Record by Charter, jurisdiction of, to commit for criminal contempt of inferior Magistrate's Court in Mofussil—Common law and inherited powers of Calcutta High Court—Powers inherited by Calcutta High Court from the Supreme Court, the Suddar Dewani and Suddar Nizamat Adawlats—Original Side and its jurisdiction—Calcutta High Court, if possessed power of English King's Bench, as custos morum or guardian and protector of justice throughout the Kingdom—Power as Court of Record and one having superintendence over other Courts, limits of their power—Contempts not in the face of the Court, how punishable—Appellate jurisdiction, contempt of, deterring witnesses from deposing before Magistrate, if contempt of High Court—Pleadings—Criminal contempt, motion for, must proceed on legal evidence—Statement on information and belief, if may be relied on in contempt proceedings—In Civil interlocutary motion, source of information to be stated—Denial when not given by person charged with criminal contempt, if admission.—Admission in affidavit, if may be considered—Supplementary affidavit or evidence in course of contempt proceedings—Superintendent and Remembrancer of Legal Affairs, status of, to move for or instruct Advocate-General for commitment for contempt on Original Side—Governor in Council as party to motion for contempt of lower Criminal Court—Right of person charged with contempt to know who is moving—Costs—Civil and Criminal contempt—Summary proceeding in contempt, drawbacks of, to be sparingly resorted to—Contempt proceedings, to be taken with the greatest caution—Taken only when interferes with course of justice, and not contingent or too remote—Where no real prejudice primâ facie tendency of language or reprehensible or objectionable writing, if enough—Commenting on the conduct or method of investigation by Police, if contempt of Court—Criminal Investigation Department, making imputations against, pending trial, if contempt—" Positive evidence," meaning of—Leave to move upon conditions, not fulfilled—Motion, petition of, and party moving, amendment of, when allowable—Indian High Courts Act, 24 & 25 Vict., c. 104, ss. 1, 3, 9, 15—Letters Patent, 1862, cls. 1, 26 and 27, Letters Patent, 1865, cls. 27 and 28—Supreme Court Charter of 1774, cls. 2, 5, and 21—53 Geo. III, c. 155—Sudder Dewani Adawlat, 21 Geo. III, c. 70, s. 21—Sudder Nizamat Adawlat—Reg. IX (Bengal) of 1793—Reg. II (Beng.) of 1901, s. 2—Act XXX of 1811—Indian Penal Code (Act XLV of 1860) if repeals all penal laws pre-existing.* Neither the Supreme Court nor the Sudder Dewani Adawlat nor the Sudder Nizamat Adawlat had jurisdiction to commit a person for contempt of a Criminal Court in the mofussil. The Calcutta High Court, which has inherited all jurisdictions and every power and authority in any manner vested in the Supreme Court, the Sudder Dewani Adawlat and the Sudder Nizamat Adawlat, has not derived any such jurisdiction from any of those Courts. Upon a true reading of the judgment in *Rex* v. *Davies*, [*1906*] *1 K. B. 32*, the jurisdiction to commit for contempt of an inferior Court by summary proceeding which the King's Bench Division of the High Court in England assumed in that case, has been inherited by it from the old King's Bench and not from the other Courts of Record which became amalgamated in the English High Court. That jurisdiction rested on the special power of that Court to correct and protect against extra-judicial error and to punish every kind of misdemeanour, on a summary proceeding as well as an indictment or information, as the *custos morum* or the guardian and protector of public justice throughout the Kingdom, a dignity that reverted to it or was revived on the abolition of the Star-Chamber. The Common Law powers as *custos morum* never belonged to the Supreme Court of Calcutta, at least in regard to contempts of inferior Courts outside the Presidency Town, and the Calcutta High Court cannot lay claim to this power by inheritance or by reason of its having been constituted by Charter a Court of Record or by reason of its power of superintendence over the Courts of mofussil Magistrates. Under 13 Geo. III, c. 63, and the Charter of the Supreme Court of 1774 thereunder, and subsequent legislation, the criminal jurisdiction of the Supreme Court of Calcutta (apart from crimes maritime), was limited to the local limits of that Court except as to British subjects, and that Court had no general power over mofussil Criminal Courts. The Common Law was similarly limited in its application to the Presidency Town and to British subjects outside its local limits. The Supreme Court possessed no statutory jurisdiction over the mofussil Magistrates or other Courts of the East India Company except as provided in 53, Geo. III, c. 155, s. III, and as regards contempts except in relation to such as were committed on the face of such Magistrates or Courts as provided in Act XXX of 1841 and not proceeded against in such Courts. The Sudder Nizamat Adawlat was neither a Court of Record nor a King's Court. The High Court, however, has in all its jurisdictions, as a Court of Record, power to commit for any contempt of itself in relation to any of those jurisdictions; and the Court on its Original Crown Side would have power so to punish any interference with the due administration of justice by a Division Bench in relation to a criminal appeal pending before it amounting to an offence under the Common Law and might possibly have such power even before any appeal was pending, as for instance, where it was shown that witnesses were being deterred from giving evidence or the jury were likely to be prejudiced. *Surendra Nath Banerjee* v. *The Chief Justice and Judges of the High Court of Bengal, I. L. R. 10 Calc. 109*, considered. *In re Abdool, 8 W. R. 32.* What may be a contempt of an inferior Court is not necessarily a contempt of the High Court. No person can be punished

CONTEMPT OF COURT—*contd*

for criminal contempt unless the offence be proved by legal evidence A statement made on information and belief is not legal evidence upon which a person may be committed for criminal contempt A party charged with criminal contempt need not deny that which is not legally proved against him *The Queen* v *Stranger, L R 6 Q B 352 40 L J Q B 91* The absence of denial by such person cannot be taken to amount to an admission But an admission in his affidavit in answer to a motion for committal for contempt can be taken into consideration by the Court The power to commit for contempt by summary proceeding being an arbitrary unlimited and uncontrolled power, should be restored to sparingly and with the greatest caution It is not enough for its exercise that there should be a technical contempt of Court It must be shown that it was probable that the publication would substantially interfere with the administration of justice Notwithstanding the *prima facie* tendency of the language where it appears that there was in fact no prejudice to any trial or the prejudice was contingent or too remote, the Court would not take summary proceedings in contempt The fact that any writing is reprehensible or otherwise objectionable does not necessarily make it cognizable for contempt of Court *Held* that the articles in question in the present case did not constitute contempt of any Court The 'Superintendent and Remembrancer of Legal Affairs and *ex officio* Public Prosecutor, Bengal,' cannot move or instruct counsel to move the High Court in the exercise of its Common Law jurisdiction, on its Original or Crown Side The proper person to move the Court for contempt in the present case was the Governor in Council The condition on which leave to serve a notice of motion is given must be complied with, otherwise the application would be liable to dismissal *Per* JENKINS C J *Quære* Whether contempt of inferior Courts committed out of Court should not be left to be punished by the general law by indictment or otherwise and not by summary procedure JENKINS C J "Positive evidence" means evidence which goes expressly to the very point in question, and that which, if believed, proves the point without aid from inference or reasoning, as the testimony of an eye witness to an occurrence as distinguished from indirect or circumstantial evidence MOOKERJEE, J — Positive evidence" means direct evidence as distinguished from circumstantial evidence JENKINS, C J — Where the articles impugned expressed distrust of the police and deprecated its mode of searches, arrests and treatment of prisoners *but said nothing* which would deter witnesses from giving evidence, they cannot be said to have constituted contempt of any Court MOOKERJEE, J The Criminal Investigation Department, by reason of having investigated an offence under inquiry or trial does not become the prosecutor thereof, and an imputation that the investigation has been carried on in an objectionable manner does not constitute a contempt of Court MOOKERJEE J

CONTEMPT OF COURT—*concld*

It is a matter of vital importance for the party, against whom an order for commitment for contempt is sought to know the person or persons at whose instance the application is made If the application is refused he is entitled to know who is responsible for his costs If the application is successful he is entitled to know who is the respondent in a possible appeal by him The motion for commitment for contempt having failed, costs were awarded to the respondent to be assessed as between party and party as on a hearing on the Original Side *In the matter of the* AMRITA BAZAR PATRIKA (1913) **17 C W N 1253**

CONTINGENT BEQUEST

See HINDU LAW—WILL.
I L R 40 Calc 274

CONTRACT

See ABWAB . **I L R 40 Calc. 806**

See HINDU LAW—JOINT FAMILY
I L R 37 Bom, 340

See MASTER AND SERVANT
I L R 35 All 132

See WORKMEN'S BREACH OF CONTRACT ACT (XIII OF 1859)

——— **made before 1886**

See MALABAR TENANTS' IMPROVEMENTS ACT (MAD ACT I OF 1900)
I L R, 36 Mad. 410

——— **recision of**

See LIMITATION ACT (IX OF 1908) SCH I, ART 95 **I L R 37 Bom 158**

——— *Sale—Goods sent to purchaser not in accordance with terms of contract—Purchaser not bound to return goods to vendor* When goods sent to a purchaser professedly in execution of a contract of sale are not of the kind which the vendor had agreed to supply, it is not the duty of the purchaser to see that such goods are returned to the vendor it is enough if he gives notice to the vendor that the goods are lying at the place to which they were sent at the vendor's risk *Grimoldby* v *Wells, L R 10 C P 391,* followed PHAGGU MAL *v* BABU LAL, (1913) **I L R, 35 All 325**

CONTRACT ACT (IX OF 1872)

——— s 2 (i)—There is nothing in the Contract Act (IX of 1872) to show an intention that a person not a party to the contract can sue on it SHANKAR VISHVANATH *v* UMABAI (1913) **I L R 37 Bom 471**

——— s 11—*Minor—Sale—Minor vendee subsequently dispossessed by third party—Right of vendee to recover purchase money from vendor* Where certain zamindari property was sold to persons who were minors at the time of sale, and the purchasers were subsequently ousted on suit by third parties, it was *held* that the purchasers were at any rate entitled to recover from

CONTRACT ACT (IX OF 1872)—*contd.*

——— s. 11—*concld.*

the vendors the sum which they had paid as purchase-money. *Mir Sarwarjan* v. *Fakhr-ud-din Mahomed Chowhduri, L. R. 39 I. A. 1; I. L. R. 39 Calc. 232,* and *Mohori Bibee* v. *Dharmodas Ghose, I. L. R. 30 Calc. 539,* distinguished. WALIDAD KHAN *v.* JANAK SINGH (1913)
I. L. R. 35 All. 370

——— **ss. 15, 69, 70, 72, illus. (*b*).**

See VOLUNTARY PAYMENT.
I. L. R. 40 Calc. 598

——— **s. 16 (as amended by Act IV of 1899)**—*Interest, grounds for reduction of—Undue influence.* It is not open to a Court to reduce the rate of interest in a promissory note unless the stipulation as to interest was obtained by the exercise of undue influence as defined in s. 16, Indian Contract Act (Act IX of 1872). *Balkishan Das* v. *Madan Lal, I. L. R. 29 All. 303,* dissented from. *Dhanipal Das* v. *Raja Maneshar Bakhsh Shing, 33 I. A. 118,* followed. *Per* THE CHIEF JUSTICE,—It was not open to the District Judge on general equitable grounds to interfere with the contract between the parties unless he was satisfied that the contract was brought about by the exercise of undue influence. *Per* SANKARAN NAIR, *J.*—Excessive interest in itself may be evidence of the fact that the debtor must have been in a very helpless condition to accept the terms imposed by the creditors. KESAVULU NAIDU *v.* ARITHULAI AMMAL (1913) . . **I. L. R. 36 Mad. 533**

——— **s. 23.**

See AGREEMENT AGAINST PUBLIC POLICY.
I. L. R. 40 Calc. 113

——— **s. 25**—*Public policy—Agreement for future separation between husband and wife—Mahomedan law—Agreements void.* An agreement for future separation arrived at between husband and wife (who are Mahomedans) is void as being against public policy under s. 25 of the Indian Contract Act (IX of 1872). *Meherally* v. *Sakerkhanoobai, I. L. R. 7 Bom. L. R. 602,* followed. BAI FATMA *v.* ALIMAHOMED AIYEB (1912).
I. L. R. 37 Bom. 280

——— **s. 62**—*Sale deed, registered—Stipulation by vendee for benefit of vendor's creditor, if enforcible by latter—Creditor informed of arrangement by purchaser and purchaser acknowledged as debtor—Purchaser if trustee—Novation—Limitation Act (IX of 1908), Sch. I, Art. 116—Consideration, definition of, in Contract Act and in English law—Justice, equity and good conscience, rule of, Courts in India to be guided by.* Where a sum is payable by *A. B.* for the benefit of *C. D., C. D.* can claim under the contract as if it had been made with himself. Defendants Nos. 1 to 4 had executed a bond in favour of the plaintiff-defendants Nos. 1 to 4 on 18th August 1903, sold all their properties to defendant No. 5 by a registered deed which provided that a part of the consideration money was to remain with defendant No. 5 for payment

CONTRACT ACT (IX OF 1872)—*contd.*

——— s. 62—*concld.*

of the debt of the plaintiff. The same day this arrangement was communicated to plaintiff by defendant No. 5 whom plaintiff accepted as his debtor. On the 25th of January 1908, plaintiff brought a suit against the defendants for recovery of the money: *Held,* that there was no novation of contract within the meaning of s. 62 of the Contract Act. That plaintiff was entitled to sue and recover from defendant No. 5 on the registered deed of sale although he was not a party to the contract, and the suit was not barred by limitation. *Tweedle* v. *Atkinson, I B. & S. 393,* commented on and held to be no authority in India. *Muhammad Khan* v. *Husaini Begum, I L. R. 32 All. 410, 14 C. W. N. 865; Gregory* v. *Williams, 3 Merivale 582, Touche* v. *Metropolitan Railway Warehousing Co., L. R. 6 Ch. App. 677, Gandy* v. *Gandy, 30 Ch. D. 57,* referred to and followed. Consideration as defined in the Indian Contract Act is wider than the requirements of the English law. In India the Courts are to be guided in matters of procedure by the rule of justice, equity and good conscience. DEBNARAIN DUTT *v.* RAMSADHAN MONDAL (1913) . **17 C. W. N. 1143**

——— **s. 63**—*Time extension of, if creates new contract—Delivery after expiry of extended time, acceptance of, if amounts to new contract—Contract varied by introduction of fresh terms, effect of—Plaint, statements in, when merely descriptive.* By mere extension of time for delivery of goods, a contract is not wiped out and no new contract arises; only the promisee gets certain rights under s. 63 of the Contract Act. But in a case where subsequent to the contract a new term was introduced for the inspection of goods by the defendants in the plaintiff's godowns before delivery and after the time for delivery had long expired the defendants took delivery of 375 bales of jute, the original contract being for much more and there being nothing to show what was the new agreement or arrangement under which such delivery was taken: *Held,* that the old contract had been superseded and the defendant could not rely on the arbitration clause in the old contract and compel the plaintiff to submit the matter to arbitration in terms of such contract, and a suit would lie for the recovery of the price of the goods so delivered. LUCHMI NARAIN BHAIRADAN *v.* HOARE MILLER & Co. (1913) . **17 C. W. N. 1098**

——— **s. 74**—*Penalty—No interest originally, but exorbitant interest on default—Court's power to curtail exorbitant interest even then and award reasonable compensation.* *Held* by the Full Bench: Even when no interest is payable until default but interest at an exorbitant rate is payable as from the date of default, the Court has power under s. 74 of the Contract Act as amended (Act IX of 1872) to treat the latter stipulation as a penalty and award reasonable compensation in lieu of such excessive interest. The English and Indian decisions as well as the statutory law including the Usury Laws Repeal Act (XXVIII of 1855) prior to the amendment of s. 74 reviewed. *Per* SUNDARA.

CONTRACT ACT (IX OF 1872)—*concld*

——— s. 74—*concld*

AIYAR, J —The principle underlying the Court s interference with the contract between the parties as to a payment to be made by way of damages is this —The doctrine that the Court will carry out all contracts between parties is confined to the carrying out of the primary contract and does not extend to a secondary or subsidiary contract to come into operation if the primary contract is broken In bonds securing payment of money, the contract regarded as primary is the promise to pay the amount due to the creditor with interest if any, agreed upon Any further contract to be binding on the promiser if he breaks this contract is regarded as a secondary one intended to secure the fulfilment of the primary contract and the Courts both in England and in India do not feel bound to carry out such a secondary contract apart from its justice and reasonableness MUTHUKRISHNA IYER v SANKARALINGAM PILLAI (1913) **I L R 36 Mad 229**

——— ss 135—139—*Surety when is discharged.* Mere forbearance on the part of the creditor in the absence of his doing or omitting to do any thing whereby the surety s eventual remedy against the principal debtor is impaired, would not discharge a surety The surety was not discharged when the creditor merely gave the debtor time to pay up without entering into a binding contract with that object BAHADUR SING v BASUNTA KUMAR ROY (1913) . **17 C W N. 695**

——— ss 151, 152 and 161—

See RAILWAY **I L R 37 Bom 1**

——— s 178—

See BAILMENT **I L R 37 Bom 122**

——— s 247—

See SALE OF GOODS **I L R 40 Calc 523**

CONTRIBUTORY NEGLIGENCE

——— *Position of passengers in railway trains who allow a part of their person to project outside the railway carriage* The plaintiff, whil[illegible]
was [illegible]
railw[illegible]
whic[illegible]
thro[illegible]
anoth[illegible]
ary on the parallel set of rails A door of one of the carriages forming the stationary train, being the eighth carriage to be passed by the train in motion having been left insecurely fastened owing [illegible]

[illegible] case of *Dullabhji Sakhidas* v *G I P Railway Co*, *I L R 34 Bom 427*, that (i) a passenger must travel inside and not outside his compartment and therefore, if he travels outside, he does so entirely at his own risk and the company cannot be held liable for any injury he suffers in consequenc[illegible]
owing [illegible]
his ca[illegible]
cannot [illegible]
law [illegible]
WAY Co (1912) **I L R 37 Bom 575**

CONVERSION

See BAILMENT **I L R 37 Bom 122**

See HINDU LAW—JOINT FAMILY **I. L R 40 Calc 407**

CO OWNERS

——— *Fiduciary relation between co tenants, conditions giving rise to—Revenue sale—Default by one co owner—Purchase by that co owner—Effect on other co owners—Suit for recovery of possession by other co owners—Public policy in India rule of English law if a safe guide to* The plaintiff sued to recover possession of her share in certain properties which had been sold away for arrears of revenue or rent alleging that the defendant No 1 who was her brother managed the whole estate on behalf of all the co sharers and that she was in possession jointly with him by receiving her share of the rents and profits, that after she had fallen out with defendant No 1 the latter did not pay her share of the rents and profits nor give up her share of the properties and in order to deprive her of her share caused the properties to be sold for arrears of revenue and himself purchased the same with his own money in the names of the other defendants *Held*, that where a revenue sale is caused by the default of a co owner and the property is afterwards purchased at that revenue sale by that co owner, there may be such relations between the defaulter and his co owner as would make it right for the Court to treat such a sale as made for the benefit of both The relations which exist between co tenants in England and the consequences of those relations are very different from those which obtain in this country, and English cases like *Biss* v *Biss*, *[1903] 2 Ch 40 57* *Kennedy* v *De Trafford* *[1897] A C 180* would hardly be safe guides to follow here *Doorga Singh* v *Sheo Pershad Singh*, *I L R 16 Calc 194*, commented on FAIZAR RAHMAN v MAIMUNA KHATUN (1913) **17 C W N. 1233**

CO-PARCENER

See COPARCENERSHIP

See LIMITATION ACT (XV OF 1877) SCH II, ART 127 . **I L R 37 Bom 64**

——— alienation by.

See LIMITATION ACT (XV OF 1877) SCH II, ARTS 127, 142 **I L R 37 Bom. 54**

[illegible]

[illegible] I. L. R. 40 Calc. 401

[illegible]

[illegible] Civil Procedure Code (Act V of [illegible]), O. XLI, r. 22. I. L. R. 37 Bom. 611

[illegible]

See Dispute concerning Land. I. L. R. 40 Calc. 982

See Exproprietary Tenant. I. L. R. 35 All. 27

COSTS.

See Arbitration. I. L. R. 40 Calc. 210

See Attorney and Client. I. L. R. 40 Calc. 380

See Civil Procedure Code 1908, O. XXXIV, r. 11. I. L. R. 35 All. 518

See Privy Council. I. L. R. 36 Mad. 501

See Trade mark. I. L. R. 40 Calc. 814

apportionment of.

[illegible] I. L. R. 40 Calc. 452

COUNSEL.

[illegible]

[illegible] case. [illegible] Calc. 898

[illegible]

[illegible] LIMITATION. I. L. R. 40 Ca[illegible]

COUNSEL, AS WITNESS.

See Bar Council, Resolutions of. I. L. R. 40 Calc. 898

COUNT[illegible]ING TRADE-MARK.

[illegible]-MARK. I. L. R. 40 Calc. 281

[illegible]TION. L. R. 40 I. A. 236

[illegible] (VII of 1870).

[illegible] VII of 1870), s. 7, 35 All. 92, 94

[illegible] tory suit—[illegible]or—En[illegible]cific [illegible] of [illegible]

COURT-FEE—concld.

as joint owner of the endowed properties with the plaintiff in the books of the Collector was improperly made. He valued the suit, for purposes of jurisdiction, at Rs. 11,005, and paid Rs. 10 as court-fee under Schedule II, Art. 17 (iii) of the Court-fees Act. Subsequently, on an objection taken under s. 42 of the Specific Relief Act by the principal defendant at the hearing of the suit, a prayer was added in the plaint for an injunction prohibiting the principal defendant from interfering with the plaintiff performing his duties as shebait and managing the debutter properties, and a further *ad valorem* fee was paid by the plaintiff under Schedule I, read with s. 7 (iv) (d) of the Court-fees Act, for the injunction. The Court of first instance having heard the suit and dismissed it on the merits, the plaintiff appealed to the High Court, and upon the memorandum of appeal he paid court-fees in the same manner as in the Court of first instance: *Held*, that the prayer for injunction was arbitrarily undervalued, that its value was the value of the relief claimed, and that the plaintiff was bound to pay *ad valorem* court-fees upon the plaint and memorandum of appeal on the basis that the value of the relief claimed was Rs. 11,005. [illegible] v. *Nanji Koer*, *[illegible]*; *Dayaram Jagjivan v. [illegible]*, *I. L. R. 31 Bom. 73*; and *[illegible] v. Makhan Lal Adya*, [illegible], referred to. RAJ KRISHNA [illegible] (1912). I. L. R. 40 Calc. 245

[illegible] *Declaratory decree*, [illegible]—*Plaint, rejection of*—[illegible] *O. VII*, [illegible] *Court-fees Act (VII of* [illegible] *(a)—Valuation* [illegible] *Valuation Act* [illegible] a suit for declaration that [illegible] Rs. 2,794 and odd should [illegible] and [illegible] for execution [illegible] execution [illegible] the family property [illegible] fee ten times [illegible] be sold in [illegible] on the land worth Rs. 7,000. The Court [illegible] rejected the plaint:—*Held*, that the real value of the reliefs claimed was Rs. 2,794 and odd, the value of the decree, and that, the plaintiff not having paid court-fee on that amount, the plaint was rightly rejected. A plaintiff cannot value his case for the purpose of court-fee and for the purpose of jurisdiction at different amounts. HARIHAR PRASAD SINGH *v.* SHYAM LAL SINGH. (1913) . . . I. L. R. 40 Calc. 615

COURT-FEES ACT (VII OF 1870).

——— s. 7.

See COURT-FEE . I. L. R. 40 Calc. 615

s. 7, cl. (iv) (c).

See COURT-FEE . I. L. R. 40 Calc. 245

COURT-FEES ACT (VII OF 1870)— *contd*

——— s. 7, cl. (ix)—

1 ——— *Decree on mortgage —Separate liabilities of distinct properties Appeal in respect of distinct properties* In a suit for sale on a mortgage a decree was passed declaring the separate liabilities of the different properties

sums of money for which the defendant's property was held liable and not one calculated on the full amount of the decree CHHABRAJI KUNWAR *v* THE COURT OF WARDS (1912)

I L R 35 All 92

2 ——— *Suit for sale on mortgage—Court fee payable in appeal—Value of the subject matter—Amount declared due on date fixed for payment* A decree for sale on a mortgage declared that on the date fixed for payment a specified sum would be due from the mortgagor which included interest *pendente lite* *Held*, that the court fee payable in appeal from such decree was to be assessed, not on the amount claimed in the suit but upon the amount with interest *pendente lite* found due by the court of first instance at the date fixed for payment BALDEO SINGH *v* KALKA PRASAD (1912) **I L R 35 All 94**

——— s 8—*Land Acquisition Act (I of 1894), secs 32, 54—Order directing compensation money to be deposited in securities appeal against—Court fee—Executor, power of disposition of—Probate and Administration Act (V of 1881), s 90* Where the widow of a testator was granted probate of his will whereby he had made a *debutter* of certain immoveable properties, of which two having been acquired by Government, the Land Acquisition Judge passed an order under s 32 of the Land Acquisition Act directing the compensation money to be invested in securities and allowing her as *shebait* to realise the interest only *Held*, in an appeal by her against the order, that court fee was payable on the memorandum of appeal under s 8 of the Court Fees Act, and her claim to receive the compensation in her own right being capable of valuation at least approximately she was bound to pay *ad valorem* court fee on a value to be assessed by the taxing officer That although she claimed as executrix she was none the less a person within the description of s 32 of the Land Acquisition Act, the powers of an executor under s 90, Probate and Administration Act being restricted by the provision of the will TRINAYANI DASSI *v* KRISHNALAL DE (1912)

17 C W N 933

——— **Sch I, Art 1, Sch II, Art 11**

——— *Civil Procedure Code, 1908, O XXXIV, r 5—Court fee—Appeal from final decree in a mortgage suit* *Held*, that an appeal from the final decree passed under O XXXIV, r 5, of the Code of Civil Procedure, 1908, requires an *ad valorem* court fee, and cannot

COURT FEES ACT (VII OF 1870)—*concld*

——— Sch I—*concld*

be stamped as an appeal from an order BAJRANGI LAL *v* MAHABIR KUNWAR (1913)

I L R 35 All 476

——— **Sch I, Art 11, Sch III—** *Probate and Letters of Administration, court fees payable on—Gross or net value—Court fee, error as to valuation, revision by High Court* Where the gross value of the property in respect of which application has been made for probate or letters of administration exceeds Rs 1 000 but the net value after deducting the liabilities against the estate is below that amount Court fee is payable under Sch I Art 11 of the Court Fees Act, though it is payable on the said net value under the provisions of Art 11 of Sch I read with Sch III of the Act The exemption from liability to pay Court fees provided by s 19, cl (viii) and Art 11 of Sch I of the Act applies only in cases where *the gross value does not exceed one thousand rupees* Where the Court below decided that no Court fee was payable on an erroneous view of law the High Court could interfere in revision under s 15 of the Indian High Courts Act THE COLLECTOR OF MALDAH *v* NIRODE KAMANI DASSY (1912) **17 C W N 21**

COURT FEES AMENDMENT ACT (XI OF 1899)

——— s **19H**, sub s (4)

See ADMINISTRATION

L R 40 I A 236

COURT OF WARDS

See CENTRAL PROVINCES GOVERNMENT WARDS ACT, s 18

I L R 40 Calc 784

See DEKKHAN AGRICULTURISTS RELIEF ACT (XVII OF 1879) s 2

I L R 37 Bom. 97

COURT OF WARDS ACT (BOM I OF 1905)

of
n
ord nate Judge When the Collector is appointed

1905) ... **I L R 37 Bom**

COURT SALE

See VATAN **I L R 37 ...**

———

fide effecting improvem...—right to value of—Improvements... Court auction who was ... is entitled to the va... *fide* effected by him ... property ...

COURT-SALE—*concld.*

the proceedings leading up to the sale. The time of his making the improvements is immaterial, provided he had then an honest belief in the validity of his title. *Bonâ fides* in this connection mean only honest belief in the validity of his title and does not extend to the necessity of making proper enquiries as to the title and regularity of the prior proceedings. S. 51 of the Transfer of Property Act is inapplicable to a purchaser at a Court-sale. *Per* CURIAM : There is a great distinction between stranger purchasers and decree-holder purchasers. The principle of *caveat emptor* has no application to a Court purchase. There is no covenant for title implied in a Court-sale and the purchaser takes only the right, title and interest of the judgment-debtor. *Quære :* Whether *Zain-ul-Abdin Khan* v. *Muhammad Ashgar Ali Khan, I. L. R. 10 All. 166,* lays down that stranger purchasers in order to be entitled to protection, should make their purchases *bonâ fide? Nanjappa Gounden* v. *Peruma Gounden, I. L. R. 32 Mad. 530, Kundarpa Nath Ghose* v. *Jogendra Nath Bose, 12 C. L. J. 391, Stock* v. *Starr, 1 Sawyer, 15; 22 (India) Fed. Cases, 1084,* and *Bright* v. *Boyd, 1 Story 478,* and *Dharma Das Kundu* v. *Amulyadhan Kundu, I. L. R. 33 Calc. 1119,* followed. 24 American Cyclopædia of Law and Procedure, page 70, referred to. MOITHEENSA ROWTHAN *v.* APSA BIVI (1913).
I. L. R. 36 Mad. 194

COVENANT FOR TITLE.

See SALE . . **I. L. R. 35 All. 163**

CRIMINAL BREACH OF TRUST.

See AGREEMENT AGAINST PUBLIC POLICY.
I. L. R. 40 Calc. 113

See CHARGE . **I. L. R. 40 Calc. 318**

See CRIMINAL PROCEDURE CODE, s. 179.
I. L. R. 35 All. 29

See PENAL CODE (ACT XLV OF 1860) ss. 406 AND 408. **I. L. R. 35 All. 361**

CRIMINAL CASE.

See APPEAL TO PRIVY COUNCIL.
17 C. W. N. 1110

CRIMINAL COURT IN INDIA.

——— verdict of, principles governing interference with.

See PRIVY COUNCIL.
I. L. R. 36 Mad. 501

CRIMINAL PROCEDURE CODE (ACT V OF 1898).

——— s. 4 (h)

1. ——— *Complaint Allegation made in writing to a Magistrate—with a view to his taking action—Examination of complainant before issue of process—Quashing of proceedings.* Where one N. M. wrote a letter to the Sub-Divisional Magistrate in which he stated that the petitioner had used insulting language towards him and asked the Magistrate to take action, and the Magistrate on receipt of that letter issued process against the petitioner without examining the said N. M.: *Held,* that the letter in question certainly comes within the definition of "complaint" given in s. 4, Cr. P. C., and the Magistrate should have examined the complainant and then proceeded in accordance with law. KHETRO MOHAN MITRA *v.* EMPEROR (1913) . . **17 C. W. N. 448**

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 4—*concld.*

2. ——— *Obstruction of public servant—Complaint—Sanction, want of—Quashing of proceedings.* The Petitioner was summoned under s. 186, Penal Code, for obstructing a peon in the execution of a warrant under the Cess Act. The report of the peon on which the proceedings were started was merely a report of what took place and contained no express or implied request to the Magistrate to take any action; *Held,* that the report did not come within the meaning of a complaint under s. 4, cl. (*h*), Cr. P. C. *Held,* further. The report not being a complaint and there being no sanction by the public officer concerned, *viz.,* the peon, the prosecution under s. 186, Penal Code, was bad. AHMED HUSAIN *v.* EMPEROR (1913) . **17 C. W. N. 980**

——— ss. 4, 195 (*1*)—"*Complaint*"—*Information of the supposed commission of an offence communicated by the District Judge to the District Magistrate with a view to the latter taking action as a Magistrate.* A Munsif, being of opinion that a document filed in a case before him had been tampered with, communicated his suspicions to the District Judge, who thereupon wrote to the District Magistrate, requesting him to take action in the matter. *Held* that the letter of the District Judge to the District Magistrate amounted to a complaint within the meaning of s. 195 (*c*) of the Code of Criminal Procedure. *Emperor* v. *Sundar Sarup, I. L. R. 26 All. 514,* followed. EMPEROR *v.* DEBI PRASAD, (1912) . **I. L. R. 35 All. 8**

——— s. 35 (*2*), (*3*)—*Several concurrent sentences each by itself non-appealable, if appealable taken collectively.* An accused, who has been sentenced to concurrent terms of imprisonment, no one of which is individually appealable, has no right of appeal against them collectively. *Abdul Khalek* v. *The King-Emperor, 17 C. W. N. 72,* not followed. *Suknandan Singh* v. *King-Emperor, 16 C. W. N.* cclxxxiv, referred to. SHABIJAN SHEIKH *v.* EMPEROR (1913).
17 C. W. N. 825

——— ss. 35, 408—*Appeal*—"*Aggregate sentences*"—*Concurrent sentences not aggregate.* The term "aggregate sentences" as used in sub-s. (*3*) of s. 35 of the Code of Criminal Procedure applies only to consecutive and not to concurrent sentences. Where therefore an Assistant Sessions Judge passes concurrent sentences and the whole term to be served by the convict

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd*

———— s 35—*concld*

does not exceed four years, the appeal under s 408 of the Code does not lie to the High Court but to the Sessions Judge *Sher Mohammad* v *Emperor of India* Punj Rec, 1901, Case 85, *Emperor* v *Tulshidas Lakshman, 11 Bom L R 544,* and *Regina* v *Gulam Abas, 12 Bom H C R 147,* approved and followed *Abdul Khalek* v *King Emperor, 17 C W N 72,* dissented from EMPEROR v TULSI RAM, (1913)
I L R. 35 All 154

———— ss 35 (3), 413

See APPEAL . **I L R 40 Calc 631**

of the Code, although proceedings under that chapter may follow an arrest under s 55 as a natural sequence An officer in charge of a police station can, therefore, arrest or cause to be arrested, without a warrant or an order of a Magistrate, any person who is by repute an habitual robber, house breaker or thief, or otherwise comes within the scope of s 110 EMPEROR v NEPAL (1913)
I L R 35 All 407

———— ss 94, 165—*Scope of—Search for specified article only—Article in possession of accused if can be searched for—General search for stolen property, if authorised* Where a Sub Inspector of Police searched the house of one S who had been charged with criminal breach of trust in respect of a sum of money and the object of the search was to discover the money and a bag in which it was contained and in the course of the search one of the petitioners cut the Sub Inspector with a sickle on the hand and

right That under ss 94, 165, Cr P C, a search can be made for a stolen article or incriminating

search for stolen property generally BISSAR MISSER v EMPEROR (1913) **17 C W N. 1209**

———— s 107—*Security to keep the peace—S 403—Autrefois acquit—S 495, withdrawal from prosecution, section inapplicable to security proceedings—No conviction or acquittal under s 107—Ss 112, 117, 118, 119, 253—S 145, order under, no bar to order under s 107 on same facts* A preliminary charge sheet under s 107, Criminal Procedure Code, was withdrawn by the police before the parties mentioned therein were ordered to appear The Magistrate endorsed the charge sheet to the effect that the accused were acquitted A fresh charge under the same section was subsequently put by the police against certain of the

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd*

———— s 107—*concld*

same persons who had been previously charge-sheeted *Held,* that the withdrawal of the first charge sheet was no bar to proceedings under the second "Neither an order of discharge nor of acquittal can properly be made in a case where the accused has not been directed to appear at all" S 495 Criminal Procedure Code, is not applicable to security proceedings An order passed by a Magistrate under s 145, Criminal Procedure Code, is no bar to the same Magistrate binding over the same parties on the same facts under s 107, Criminal Procedure Code *In re* MUTHIA MOOPAN (1913) **I L R. 36 Mad. 315**

———— s 107, cl (4), s 496—BAIL—*ss 344 and 167.* S 107 clause (4) Criminal Procedure Code, makes an exception to the general rule laid down in s 496 which enacts that bail shall be given in all cases in which a person is not charged with a non bailable offence S 107, clause (4), compared with s 344 and 167, Criminal Procedure Code *Re* NARAYANASAMI NAICKEN (1913) **I. L. R 36 Mad 474**

———— s 109

See OSTENSIBLE MEANS OF SUBSISTENCE
I L R 40 Calc 702

———— s 110—'*Any person within the local limits*', *meaning of—Jurisdiction of Magistrate over outsiders found within local limits—Object of the section* In order to give jurisdiction to a Magistrate to proceed under s 110, Criminal Procedure

is 'any person who is within the local limits at the time the Magistrate takes action under the section *Ketabdi* v *Queen Empress, I L R 27 Calc 993,* not followed A contrary view would

territories, who infest British India" *In re* RANGAN (1913) **I. L R 36 Mad. 96**

———— s 110—*Proceeding, if may be quashed by High Court at initial stage—Mala fide, allegations that proceeding, police report, if complete answer to—High Court, duty of to prevent abuse of provision of Statute—Scope and object of proceeding under*

promise or ending in acquittal, if admissible—District Gazetteer, extract from, admissibility of, to prove reporting officer's attitude towards accused MOOKERJEE, J—The object of s 110, Cr P C, is preventive and not punitive, and the purpose the Legislature had in view was to afford protection

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

———— s. 110—*contd.*

to the public against the repetition of crimes in which the safety of property is menaced and not the security of persons alone is jeopardised. *Nawab* v. *Queen, I. L. R. 2 All. 835,* referred to. The preventive jurisdiction with which this Magistrate is thus vested is a powerful means to secure the interests of the community from injury at the hands of hardened offenders of the most dangerous classes. But this very fact renders it necessary that the powers should be exercised with caution and discretion. The Magistrate may initiate proceedings on information derived from any source, and he is not bound to reveal the source of his information and it is sufficient if he states the substance thereof and, at the initial stage, the Crown is not bound even to name the witnesses who will support the case by their evidence. Though, therefore, *primâ facie*, a police-report would be an adequate foundation for a proceeding under s. 110, Cr. P. C., it would not, in every case, be a complete answer to the allegation that the proceeding is not *bonâ fide.* Whenever it is established conclusively either by direct evidence or by evidence of surrounding circumstances, that the proceedings are not *bonâ fide* and that in substance their continuance would mean an abuse of statutory provisions on the subject, it is not only competent to the High Court but it is its obvious duty to interfere and quash proceedings even at the initial stage. *Held,* by MOOKERJEE, J. (agreeing with IMAM, J.), that the provisions of the section were misapplied when the object of the proceeding was found to be to compel a landlord to adopt methods of management of his estate approved by the authorities but not assented to by him. *Per* CARNDUFF, J. (*contra*)—A police-report setting out informations fulfilling the requirements of s. 110, Cr. P. C., is a sufficient ground for proceeding under s. 110, Cr. P. C., and a Magistrate cannot properly refrain from acting on it merely because the police may have over-stated their case. And as proceedings of the Magistrate ought to be presumed to be *bonâ fide* until the contrary is proved, a proceeding under s. 110, Cr. P. C., initiated by the Magistrate upon a police-report ought not to be quashed until the statements in the police-report have been tested and put to the proof. *Held* by MOOKERJEE, J. (agreeing with IMAM, J.), that extracts from the Magistrate's Administration Report appearing in the District Gazetteer and which contained reflections on the petitioner's conduct as landlord and upon which he relied to show that his treatment by the Magistrate leading up to the institution against him of proceedings under s. 110, Cr. P. C., was in harmony with the views expressed in the Administration Report were relevant and admissible in evidence. *Fanindra Deb* v. *Rajeswar Das, I. L. R. 11 Calc. 463 : L. R. 12 I. A. 72,* referred to. A judgment of acquittal fully establishes the innocence of the accused, and a criminal proceeding which ended in the acquittal of the accused

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

———— s. 110—*concld.*

cannot be relied upon by the Crown as evidence of bad character in a subsequent proceeding under s. 110, Cr. P. C., against him. *King* v. *Plummer,* [*1902*] *2 K. B. 339, Emperor* v. *Nani Gopal, 15 C. W. N. 593, Pulin Bihari Dass* v. *King-Emperor, 15 C. L. J. 577 : 16 C. W. N. 1105,* referred to. No inference adverse to an accused ought to be drawn from criminal proceedings which terminated in compromise. RAJENDRA NARAIN SINGH *v.* EMPEROR (1912) . . **17 C. W. N. 238**

———— **ss. 110, 118, 367, 424**

See PRACTICE . **I. L. R. 40 Calc. 376**

———— ss. 112, 118—*Order to show cause, terms of, if restricts scope of enquiry—Prejudice.* The enquiry provided by ss. 117 and 118 of the Code of Criminal Procedure is not strictly limited by the terms of the order drawn up under s. 112 calling upon the accused to show cause why he should not execute a security bond to keep the peace or for his good behaviour, though if the person eventually bound down can show that he was misled or prejudiced by the terms of the order, he would be entitled to relief. DEPUTY LEGAL REMEMBRANCER *v.* KADIR MIRZA (1912).

17 C. W. N. 331

———— s. 125—*Security to keep the peace—Procedure—Appeal—Jurisdiction.* A District Magistrate taking action under s. 125 of the Code of Criminal Procedure cannot treat an application made under that section as an appeal and reverse the order of a first class Magistrate on the facts. If he considers the order to be wrong on the merits, he can exercise his revisional powers and submit the record to the High Court: but the cancellation of bonds contemplated by s. 125 can only be on the ground that the bonds are no longer necessary. BANARSI DAS *v.* PARTAB SINGH, (1912) . . . . **I. L. R. 35 All. 103**

———— s. 144—*Proceedings under.* Advisability of taking proceedings under s. 144, Cr. P. C., to prevent disturbance of peace considered. MANIK CHANDRA CHAKRAVARTI *v.* PREO NATH KUAR (1912) . . . **17 C. W. N. 205**

———— **s. 145**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 107.

I. L. R. 36 Mad. 315

———— **s. 145**

See DISPUTE CONCERNING LAND.

I.L.R. 40 Calc. 982

1. ———— *Proceedings under—Adjournment, property of—Witnesses, processes to enforce attendance of, when may be refused.* A Magistrate, acting under s. 145 of the Criminal Procedure Code, should take all the evidence that is produced before him on the day originally fixed by him for the disposal of the proceeding, and unless he considers it necessary for good reason

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd*

——— s 145—*contd.*

to require further evidence, should decide then and there, if he can, which of the parties was in actual possession. Where the Magistrate, on the application of one of the parties, on the date originally fixed for the disposal of the proceeding under s 145, granted an adjournment and issued summons on witnesses named by the party, some of whom did not appear on the adjourned date and some of those present were not examined by the party calling them, and the Magistrate on the application of the party issued fresh summons

party applied for fresh adjournment and the issue of fresh processes. *Held*, that having regard to the previous conduct of the party concerned and also to the circumstance that the witnesses mentioned could not be found, the Magistrate acted rightly in refusing to issue fresh process. *Held*, further, that the Magistrate should not have granted any adjournment after the date originally fixed for the disposal of the proceeding, as in the present case, no adequate reason appears to exist for granting such adjournment. HARIPADA MANDAL *v* SANYASI CHARAN BISWAS (1912)

17 C W N 144

2 ——— *Public claiming easement if may be party to a proceeding under the section—Declaring the public to be in possession effect of—Joint possession—Ousting of Jurisdiction of the Magistrate—Right of the public to be in possession for one day in the year to perform puja, nature of—Easement—Constructive conditional possession—Proceeding not directed to the decision of the absolute continuing possession of either party ultra vires.* If the public are declared under s 145, Cr P C, to be in possession of any piece of land then both parties to the dispute are included in that term and the possession therefore is joint possession and the jurisdiction of the Court under s 145, Cr P C, is ousted. Where one of the parties to a proceeding under s 145, Cr P C, representing the public claimed only the right to worship on the disputed land on one day in the year and the right to make due and proper preparations for the holding of that worship by erecting huts for the purpose of holding puja. *Held*, the right of such party to be in possession for one day in the year or to take such steps as are necessary to prepare for the puja is in the nature of an easement and not in the nature of possession. Proceedings under s 145, Cr P C are entirely without jurisdiction unless they are directed to the decision of the absolute continuing possession of either party until they are ousted by the order of the Civil Court. MANIK CHANDRA CHAKRAVARTI *v* PREO NATH KUAR (1912)

17 C W N 205

3 ——— *Disputed land—Pathways thereon—Possession of disputed land found with one party—Order directing pathways to remain*

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd*

——— s 145—*concld*

intact and remainder of disputed land to remain in possession of successful party—Jurisdiction to make such order. Where in a proceeding under s 145, Cr P C, the Magistrate found that the disputed land was in possession of the second party but directed that two pathways on the disputed land should remain intact and only the remainder of the disputed land should remain in possession of the second party. *Held* that there is nothing in s 145 Cr P C which gives a Magistrate power to pass an order of this kind. ASIT MOHAN GHOSH *v* SARAT CHANDRA GHOSH (1913)

17 C W N 793

4 ——— *Jurisdiction of High Court to deal in revision with orders passed under s 145.—S 439 meaning of words 'otherwise comes to its knowledge'—Ss 438, 439, compared—S 145, Criminal Procedure Code—Defective preliminary order effect of.* Ss 143, 144, 145 and 146 Criminal Procedure Code, deal with proceedings which are not criminal or punitive but prohibitive and where cause is shown the local magistracy has unfettered discretion to act under them. Therefore from the use of the word 'otherwise' in s 438 a power in the Sessions Judge and the District Magistrate to interfere

by the High Court reviewed. An omission to set forth in a preliminary order under s 145 Criminal Procedure Code, the grounds of a Magistrate's opinion do not affect the jurisdiction of the Magistrate. *Khosh Mahomed Sirkar* v *Nazir Mahomed*, *I L R 33 Calc 352* discussed, and *Subrahmania Ayyar* v *King Emperor*, *I L R 25 Mad 61*, distinguished. The essential requisite to give a Magistrate jurisdiction under s 145, Criminal Procedure Code is that he must be satisfied from information of some sort that a dispute exists likely to cause a breach of the peace concerning land or water or the boundaries thereof in his jurisdiction. Once he is so satisfied his jurisdiction is complete and his subsequent action must be considered in relation to procedure not jurisdiction. KAMAL KUTTY *v* UDAYAVARMA RAJA VALIA RAJA OF CHIRAKKAL (1913)

I L R 36 Mad 275

——— s 146 (2)

See RECEIVER I L R 40 Calc 862

——— ss 146, 148

See ATTACHMENT I L R 40 Calc 105

——— s 154—*First information if substantive evidence.* Six persons were convicted of murder and sentenced to death. The Sessions Judge treated the first information in the case as a piece of substantive evidence. The accused appealed

CRIMINAL PROCEDURR CODE (ACT V OF 1898)—*contd.*

———— s. 154—*concld.*

to the High Court. There was a difference of opinion between the Judges who first heard the appeal necessitating a reference to a third Judge and nearly six months elapsed before the appeal was finally disposed of. *Held, per* STEPHEN AND CARNDUFF, JJ.—The first information, although a document of great importance which is in practice always and very rightly produced and proved in criminal trials, is not a piece of substantive evidence, and it can be used only as a previous statement admissible to corroborate or contradict the author of it. AUTOR SINGH *v.* EMPEROR (1913) . . . . 17 C. W. N. 1213

———— s. 164.

See CONFESSION I. L. R. 40 Calc. 873

———— ss. 173, 190 (*1*) (*b*).

See COGNIZANCE I. L. R. 40 Calc. 854

———— ss. 177, 531.

See PENAL CODE, ss. 463, 471.
I. L. R. 36 Mad. 387

———— s. 179—*Jurisdiction—Place where consequence of act ensued—Act No. XLV of 1860 (Indian Penal Code), s. 406—Criminal breach of trust.* *Held*, that the loss caused to the person beneficially entitled to property through a criminal breach of trust, is a consequence which completes the offence, and a prosecution will therefore lie at the place where such loss occurred. *Queen Empress* v. *O'Brien, I. L. R. 19 All. 111. Emperor* v. *Mahadeo, I. L. R. 32 All. 377*, followed. *Babu Lal* v. *Ghansham Das, All. W. N. (1908), 115, Ganeshi Lal* v. *Nand Kishore, I. L. R. 34 All. 487*, and *Sirdar Meru* v. *Jethabhai Amirbhai, 8 Bom. L. R. 513*, distinguished. *Nirbhe Ram* v. *Kallu Ram, 4 O. C. 376*, dissented from. LANGRIDGE *v.* ATKINS (1912).
I. L. R. 35 All. 29

———— s. 185.

1. ———— *Power of the High Court under the section to transfer case pending in Court not subject to its jurisdiction—Stay of further proceeding to enable accused to bring Civil action—Proceeding which discloses no offence, if to be quashed.* Where the nominee of a policy holder claiming payment in respect of a life policy effected at Chittagong, and resident within the District of Chittagong, brought a charge of cheating in the Court of the District Magistrate of Chittagong against the Secretary and other officers of an Insurance Company having its head office at Gujranwalla in the Punjab and a branch office at Chittagong, and the Insurance Company brought a charge of cheating against the nominee and others in the Court of the District Magistrate of Gujranwalla, both charges relating to the payment of the amount secured on the policy: *Held* (on an application by the nominee under s. 185, Cr. P. C.), that the High Court could properly make an order under s. 185, Cr. P. C., to the effect that the offence should be enquired into and tried at Chittagong and transfer the case from the Court of the District Magistrate of Gujranwalla to that of the District Magistrate of Chittagong. Proceedings in the case were, however, stayed for two months to enable the accused to institute a Civil suit. *Held* (on the application of the officers of the Insurance Company), that as, on the face of the record, no offence had been disclosed against them, the proceeding against them should be quashed. HIRAN KUMAR CHOWDHURY, *v.* MANGAL SEN (1912).
17 C. W. N. 761

2. ———— *High Court if can interfere merely on the ground of convenience.* Where the petitioners were prosecuted in the Court of the Additional District Magistrate of Lahore under ss. 409, 420, 467, 447, Penal Code, and on the allegations of the prosecution the Courts at Chittagong and Lahore were equally competent to exercise jurisdiction in the case: *Held*, that s. 185, Cr. P. C., does not warrant interference by the High Court merely upon the ground of convenience. The decision of the High Court within the local limits of whose appellate jurisdiction the offender actually is, can only be sought where a doubt arises as to the Court by which an offence should be enquired into or tried. RAJANI BINODE CHACKERBURTTY *v.* THE ALL INDIA BANKING AND INSURANCE CO., LD., LAHORE (1913).
17 C. W. N. 1207

———— s. 190 (*c*).

See JURISDICTION OF CRIMINAL COURT.
I. L. R. 40 Calc. 71

———— *Information before police reported to be false—Judicial enquiry ordered by Deputy Magistrate disposing of police-report—Case made over to another Magistrate—Issue of process by latter after enquiry—Competency of such Magistrate to try accused.* Where the police reported an information of theft lodged against the petitioners by one S to be false and recommended the prosecution of S, and the Deputy Magistrate in charge on receipt of the police-report ordered a judicial enquiry although there was no complaint by S and subsequently recalled that order and made over the case for disposal to another Deputy Magistrate, who after taking evidence issued summons against the petitioners: *Held*, that the Deputy Magistrate, who issued process against the petitioners, did not act either upon a police-report or upon a complaint, and although s. 190, cl. (*c*), may not strictly apply, the petitioners ought to be allowed to have the case tried by another Magistrate. ANANTA RAM TEWARY *v.* SHEIKH ALTAB SARKAR (1913) . . . 17 C. W. N. 795

———— s. 195.

See PERJURY . I. L. R. 36 Mad. 471

See SANCTION FOR PROSECUTION.
I. L. R. 40 Calc. 37, 237, 423, 584

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd*

———— s 195—*contd.*

Sanction for prosecution A District Judge hearing an election petition under the provisions of s 22 of the Bombay District Municipalities Act (*Bombay Act III of 1901*) is a Court within the meaning of s 195 clause (*b*) of the Criminal Procedure Code 1898 No prosecution for attempting to fabricate false evidence (ss 193 and 511 of the Indian Penal Code) before the District Judge can be instituted without having obtained sanction as required by s 195 of the Criminal Procedure Code 1898 *Ragloobuns Saloy* v *Kohil Singh I L R 17 Calc 872* followed *In re* NANCHAND SHIVCHAND (1912) **I L R 37 Bom. 365**

17 C W N 976

———— s 195 (*b*)—*Penal Code* (*Act XLV of 1860*)
copy filed u
false evidence
was said to
registered
the Munsif
and filed a certified copy
with the plaint as proof of marriage and asked the Court to cause the original to be produced *Held* under s 195 cl (*b*) Cr P C no Court could take cognizance of an offence under s 193, Penal Code imputed to the petitioner except with the previous *sanction or on a complaint of* the Munsif's Court or of some other Court to which the Munsif s Court was subordinate such offence being committed in relation to a judicial proceeding in the Munsif's Court. ABDUL MAJID KHAN *v* MUNSHI NARUL HUQ (1913) **17 C W N 937**

———— s 195, cls (*b*) and (*c*)—*Sanction to prosecute—Power of Appellate Court to grant sanction—Appeal—Revision* *Held* that the Appellate Court equally with the Court of first instance *has power to grant sanction for a prosecution* in respect of a document filed or evidence recorded in the suit *Held* also that a petition under s 195 (*6*) of the Code of Criminal Procedure seeking

CRIMINAL PROCEDURE CODE (ACT V OF 1898) *contd*

———— s 195—*concld*

the cancelment of an order under s. 195 (*1*), should be classed as a criminal appeal BHADESWAR TIWARI *v* KAMTA PRASAD (1912) **I L R 35 All. 90**

diction meani
dency Small Causes Court giving or refusing sanction an appeal lies to the High Court generally and not to any particular branch of it But the jurisdiction it exercises being Appellate and not Original it is the Appellate side alone that can dispose of such matters The effect of clause (*7*) (*c*) of s 195 Criminal Procedure Code is merely

with a judgment of another Court having power *to confirm or to set it aside* the *jurisdiction it* exercises is appellate jurisdiction Original jurisdiction is the jurisdiction in original proceedings instituted in the Court whether suits petitions or other proceedings The Original Side of the High Court *is not a different Court* from the Appellate Side the Court is one but it exercises both original and appellate jurisdiction. JAMNA DOSS *v* SABAPATHY CHETTY (1913) **I L R 36 Mad. 138**

———— ss 195 476, 532, 537

See JURISDICTION OF CRIMINAL COURT **I L R 40 Calc 360**

———— ss 202, 476

See COMPLAINT DISMISSAL OF **I L R 40 Calc 441**

———— s. 203

See CRIMINAL REVISION **I L R 40 Calc 41**

summarily
person con
e to a person
against whom a complaint is made is quite unnecessary where it is sought to set aside the summary order rejecting the complaint in a proceeding *to which he was actually no party* ANGAN *v* RAM PIRBHAN (1912) **I. L R. 35 All. 78**

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CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 205—*concld.*

High Court in revision made an order allowing the petitioners to appear by pleader before the Magistrate as also in the Court of Session in case of committal to that Court, subject to the petitioners' having to appear before the Court, to hear the sentence in the case of conviction. The High Court on a consideration of the circumstances transferred the case under s. 526, Cr. P. C. Raj Rajeshwari Debi *v.* The King-Emperor (1913). **17 C. W. N. 1248**

——— **s. 208, sub-ss.** (*1*) **and** (*3*)—*Witnesses, refusal of Magistrate to summon before commitment—Magistrate's discretion.* A Magistrate has a discretion for reasons to be recorded by him to refuse to summon witnesses under s. 208, Criminal Procedure Code (Act XLV of 1898), prior to his making a commitment. Sub-s. (*1*), s. 208, Criminal Procedure Code, contemplates the production of evidence by the prosecution or by the accused without the aid of the Magistrate. Sub-s. (*3*) contemplates the intervention of the Magistrate to secure the attendance of witnesses and in regard to the evidence the Magistrate has a discretion for reason to be recorded by him to refuse to issue process. When therefore s. 210 requires the evidence referred to in s. 208, sub-ss. (*1*) and (*3*), to be recorded before a charge is drawn up, it does not require the Magistrate to record the evidence of witnesses whom in the exercise of the discretion given by sub-s. (*3*), he has deemed it unnecessary to summon. Sessions Judge of Coimbatore *v.* Kangaya Mantradiyar (1913). **I. L. R. 36 Mad. 321**

——— **ss. 221, 222, 223**—*Forgery, charge of —Omission to set out intention.* Where the charge under s. 467, Penal Code, did not set out the intention of the accused: *Held,* that this vitiated the charge. Haidar Ali Pradhania *v.* Emperor (1912) . . . . . **17 C. W. N. 354**

——— **s. 222** (*2*)—*Indian Penal Code* (*Act XLV of 1860*), *s. 406—Criminal breach of trust —Gross sum specified in charge—Particulars as to time—Defect in charge amounting to illegality—Applicability of s. 537, Cr. P. C., to cure such defect—Retrial if may be ordered where charge fails for want of evidence.* Where the appellant, who was an executor to the estate of one D. M. R. under his will and who was finally called upon on the 15th August 1910 to deliver over to the complainant all money, valuables and papers belonging to the testator's estate, was placed on his trial on two charges under s. 406, Penal Code, and was charged in the first charge with having committed criminal breach of trust in respect of or having dishonestly misappropriated the gross amount specified in the charge between 17th August 1909 and 15th August 1910, and in the second charge with having committed the same offence in respect of the account books of the estate between 11th July 1910 and 15th August 1910, and it appeared that most of the sums making up the gross amount charged

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 222—*concld.*

were received before the period specified in the charge, and the evidence did not disclose any completed act of breach of trust between the dates mentioned in the charge and there was no evidence of any dishonest dealing with the account books before the 15th August 1910: *Held,* as to the first charge, that the error in the charge and the discrepancy between the dates specified therein and the actual dates on which the offence appeared to have been committed, were not a mere irregularity which might be cured by the provisions of s. 537, Cr. P. C. It vitiated the whole trial and the appellant was entitled to an acquittal, *Subramanya Ayyar* v. *King-Emperor, 5 C. W. N. 866 : I. L. R. 25 Mad. 61,* followed. It was not enough to know that there was embezzlement at some time, before during, or after the period charged, because the charge was framed under the special provisions contained in cl. (2) of s. 222, Cr. P. C., and the provison thereto, and it was at any rate necessary to show an act or acts of embezzlement in respect of the gross sum named in the charge or some part of it committed within the space of one year. *Held,* as to the second charge, that the same objection applied to the second charge which however was not bad on the ground that there was a separate offence as regards each ac-account book and the appellant could not be tried for more than three of such offences, the books forming one set of account books of the estate and having been found together in two locked boxes, the keys of which were with the accused. No re-trial was ordered in this case as the charges failed not because they were not deficient in point of form, but because they were not supported by the evidence adduced. Promotha Nath Ray *v.* King-Emperor (1912) . . **17 C. W. N. 479**

——— **s. 233.**

See Charge . **I. L. R. 40 Calc. 846**

——— **ss. 233 to 235.**

I. L. R. 40 Calc. 318

——— **ss. 233, 235, 239**—*Irregularity in charge—Misjoinder of offences and parties—Charge framed confusing—Prejudice—Re-trial by a new Magistrate.* Where the two petitioners were charged under s. 324, Penal Code, with causing hurt to three persons and only one charge was framed against them which was in the following terms—"That you, or on about the 1st day of February 1906 at M voluntarily caused hurt to B. S. and L. by a *dao*, a cutting instrument, and thereby committed an offence punishable under s. 324, I. P. C.," and one of the petitioners was convicted under s. 324, Penal Code, and the other petitioners was convicted, by the lower Appellate Court under s. 352, Penal Code, for using a *lathi* against two of the persons named in the charge: *Held,* that the irregularity in the charge might have prejudiced the accused in their trial and the conviction should be set aside and the accused should be retried

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd*

——— s 233—*concld*

on charges properly framed Re trial by a new Magistrate ordered SITAL CHANDRA MOITRA *v* THE EMPEROR (1906) **17 C W N 419**

——— ss 248, 258, 345—*Warrant case—Non-compoundable offence—Complainant withdrawing from prosecution—Order of acquittal—Practice and procedure* In a warrant case in respect of a non compoundable offence it is not competent to the Magistrate on a private complainant s offering to withdraw from the prosecution to enter an order of acquittal EMPEROR *v* RANCHHOD BAWLA (1912) **I L R. 37 Bom. 369**

——— ss 250—*False charge—Vexatious charge—Compensation awarded to accused from complainant—Order sanctioning prosecution of complainant for false charge under s 211 of the Indian Penal Code (Act XLV of 1860)* S 250 of the Criminal Procedure Code (Act V of 1898) applies to a charge which is false and also to a charge which is frivolous or vexatious *Emperor* v *Bai Asha 5 Bom L R 128* and *Beni Madhub Kurmi* v *Kumud Kumar Biswas I L R 30 Calc 123* followed It is competent to a Magistrate passing an order of compensation under s 250 of the Criminal Procedure Code to also recommend issue of sanction to prosecute the complainant under s 211 of the Indian Penal Code 1860 *Adikkan* v *Alagan I L R 21 Mad 237*, followed *Bachu Lal* v *Jagdam Sahai I L R 26 Calc 181* not followed *In re* GOPALA BHAU (1912)
I L R. 37 Bom 376

——— ss 255, 256, 271, 272 and 428

See EVIDENCE ACT (I OF 1872) s 21
I L R. 36 Mad 457

——— s 260

See COMPANIES ACT (VI OF 1882) s 74
I L R 35 All. 173

——— s 284—*Assessors—Trial with only one duly appointed assessor—Trial illegal* Of two assessors assisting the Sessions Judge in the trial of a sessions case one only had been duly summoned to act as an assessor in that case The other was a gentleman of some position who had formerly been on the list of assessors but had been exempted on the recommendation of the District Magistrate *Held* that in these circumstances there was no lawful trial before a lawfully constituted tribunal and that a new trial must be ordered *Queen Empress* v *Badri* *All W N (1894) 201* followed EMPEROR *v* MAN SINGH (1913) **I L R 35 All. 570**

——— ss 297, 303

See JURY TRIAL BY
I L R. 40 Calc 367

——— ss 297, 303, 304—*Trial by Court of Sessions—Verdict how to be taken, where many accused and both jury and assessors charged* S 297 Criminal Procedure Code (Act XIV of 1898) specifically enacts that the Judge shall only charge the jury when the case for the defence and the prosecution reply are concluded Where therefore the Judge heard arguments and took verdicts as regards certain accused and subsequently went on to hear arguments and take verdicts as regards other accused *Held*, that the procedure adopted

to consider that verdict It may only be questioned to find out what in fact the verdict is. Criminal Procedure Code ss 303 and 304 discussed and explained PUBLIC PROSECUTOR *v* ABDUL HAMED (1913) **I L R 36 Mad 585**

ing lots and the Sessions Judge held an enquiry into the matter in the course of which he examined besides other persons all the jurors *Held* that the statement of a juror as to what happened in the jury room is inadmissible KING EMPEROR v HARKUMAR BURMAN ROY (1913)
17 C W N 787

——— s 307 cl (3)—*Judge and jury disagreement between—Duties of High Court on reference* In the case of a reference to the High Court on a

alone but to that of the Sessions Judge as well EMPEROR *v* SHEIKH NIAMATULLA (1913)
17 C W N 1077

——— ss 309, 403, 423, 439

See ASSESSORS EXAMINATION OF
I L R 40 Calc 163

with the approver—Joint trial—Practice and procedure In an inquiry into a charge of dacoity against five accused persons the Magistrate granted a conditional pardon to one of them The approver was examined as a witness in the inquiry against the four remaining accused persons but he denied all knowledge of the alleged dacoity and the accused persons were discharged by the Magistrate under s 209 of the Criminal Procedure Code (Act V of 1898) The pardon granted to the approver was next withdrawn and the case as against him with regard to dacoity was proceeded with under s 339 of the *Criminal Procedure Code* It ended in his being committed for trial to the Court

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 337—*concld.*

of Sessions. The material piece of evidence to be adduced against the approver was his confessional statement which implicated both himself and the four accused persons. The Sessions Judge referred the case to the High Court for an order quashing the commitment and directing the re-trial of the approver along with the discharged accused persons. *Held,* that the High Court had the power to direct that the accused persons, who had been discharged, should be subjected to a re-trial jointly with the approver, for, under s. 437 of the Criminal Procedure Code, the High Court had the power in the case of those accused persons to direct that there should be a fresh inquiry, and if that inquiry ended in the framing of a charge that they should be committed to a particular Court of Sessions. *Held,* further, that inasmuch as the provisions of sub-s. (*3*) of s. 337 of the Criminal Procedure Code were fully carried out at the time when they were applicable, namely, during the pendency of the Magisterial proceedings, they would not constitute and bar against the High Court's ordering that if the inquiry against the discharged persons ended in a commitment, they should be committed to trial jointly with the approver. *Per* CURIAM *:* Sub-s. 3 of s. 337 of the Criminal Procedure Code contemplates only a case where there has been a commitment made by the Magistrate to the Court of Session or the High Court. It omits to consider the case where the Magistrate himself on his own responsibility discharges the accused person. The meaning of the sub-section is that the approver shall not be set at large until the judicial proceedings pending against the accused are finished. For the purposes of the section it is immaterial whether the proceedings are finished by a Magisterial order of discharge before trial, or by a Judge's order of acquittal after trial. In the case of the Magisterial discharge, the sub-section would be satisfied if the approver were detained in custody or on bail until the order of discharge was made. EMPEROR *v.* INTYA SALABAT KHAN (1912).

I. L. R. 37 Bom. 146

——— s. 342—*Cross-examination of accused, propriety of.* Cross-examination of the accused by putting questions with a view to induce him to incriminate himself condemned. HAIDAR ALI PRADHANIA *v.* EMPEROR (1912).

17 C. W. N. 354

——— ss. 345, 403 (*2*)—*Several offences alleged in complaint—Accused summoned for one of such offences—Compromise of such offence with leave of Court—Further prosecution for the other offences if lies—Case if revivable on the ground of non-payment of compensation for compromise.* The petitioner was accused of committing house trespass, causing grevious hurt and being members of an unlawful assembly but was summoned only under s. 325, Penal Code, and the offence under that section was compromised with the leave of the Court.

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 345—*concld.*

The complainant subsequently filed another complaint and sought to revive the case alleging that the terms of the compromise had not been carried out: *Held,* that the petitioner could not be again prosecuted either for grevious hurt or house trespass or for being members of an unlawful assembly, the common object being to commit offences which had been compromised. BASIRUDDI *v.* KHAIRAT ALI (1913). . **17 C. W. N. 948**

——— s. 349—'*Shall pass such order as he thinks fit,' meaning of.* The words 'such order as he thinks fit' in s. 349, Criminal Procedure Code, do not empower the Superior Magistrate to send the case back to the Sub-Magistrate for disposal but only empower him to pass such final order disposing of the case as he may think fit. *Re* PONNUSAMY NADAN (1913) . . **I. L. R. 36 Mad. 470**

——— ss. 364, 533.

See EVIDENCE ACT (I OF 1872), s. 91.
I. L. R. 35 All. 260

——— s. 374—*Capital sentence—Circumstances to be considered by the High Court in confirming sentence of death—Delay between passing of sentence in the Sessions Court and final orders in the High Court, if sufficient ground for not confirming sentence of death.* *Per* CARNDUFF, J.—As the law stands in India where the alternative sentences of death and transportation are prescribed for murder, the fact that the accused had the capital sentences suspended over their heads for nearly six months is a matter for the consideration of the Judge of the High Court who finally disposes of the appeal, and he ought not to confirm the sentence of death which might have been rightly passed by the Sessions Judge in the first instance, unless he personally thinks that such sentence should be carried out at the time final orders are passed by him, and delay, such as in the present case, is a sufficient reason for refraining from imposing the extreme penalty. AUTOR SINGH *v.* EMPEROR (1913).

17 C. W. N. 1213

——— ss. 397, 123—*Sentence—Postponement of sentence—Person undergoing imprisonment for failing to give security—Penal Code (Act XLV of 1860), s. 379—Theft—Practice and procedure.* The accused was convicted of an offence of theft and sentenced to suffer rigorous imprisonment for six months. At that date he was undergoing imprisonment for failing to give security for good behaviour. The Magistrate directed that the sentence passed in the theft case should take effect after the expiry of imprisonment inflicted in the security proceedings:—*Held,* that the sentence passed in the theft case could not be postponed to the expiry of imprisonment in the security proceedings inasmuch as the latter was not a "sentence of imprisonment" as used in s. 397 of the Criminal Procedure Code, 1898. *Emperor* v. *Kanji, 5 Bom. L. R. 26, Emperor* v. *Durga, 6 Bom. L. R. 1098,*

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s 397—*concld*

and *Emperor* v *Arjun*, *I L R 34 Bom 326*, followed EMPEROR v VISHNU BALKRISHNA (1912)
I. L R 37 Bom 178

——— s 403 (*1*)—*Autrefois acquit—S 403 (4), scope of—Sanction to prosecute, s 195—Indian Penal Code (Act XLV of 1860), ss 182 and 211* Sanction was obtained by the complainant to prosecute the accused for an offence under s 211, Indian Penal Code Accused was tried and convicted, but the conviction was quashed by the High Court in revision on the ground that the accused had not committed an offence under that section but under s 182, Indian Penal Code, for which no sanction had been granted. Complainant thereupon obtained sanction to prosecute the accused under s 182 Indian Penal Code On accused pleading in bar of prosecution s 403 (*1*) Criminal Procedure Code, the Magistrate overruled the objection and his order was confirmed by the Court of Session Accused petitioned the High Court *Held* that the prosecution was barred by s 403 (*1*), Criminal Procedure Code *Held*, further, that s 403 (*4*) refers to the character and status of the tribunal when it refers to competency to try an offence and that a sanction under s 195, Criminal Procedure Code, is not a condition of the competency of the tribunal but only a condition precedent for the institution of proceedings *In re* GANAPATHI BHATTA (1913)
I. L. R. 36 Mad. 308

——— s 413—*Appeal—Concurrent sentences aggregating to more than one month by a Magistrate of the first Class—Whether appeal lies* For the purpose of appeal, concurrent sentences passed by the trying Magistrate on an accused must be taken in the aggregate The petitioner and others were found guilty by a Magistrate of the first Class under ss 143 and 365, read with s 114, Penal Code and each of them was sentenced to one month s rigorous imprisonment under each of the sections, the sentences to run concurrently *Held*, that an appeal lay to the Court of Sessions ABDUL KHALEK v THE KING EMPEROR (1912)
17 C. W. N. 72

——— s. 435—*Order by Deputy Magistrate amounting to a dismissal of complaint—Fresh complaint disposed of by District Magistrate—Further enquiry ordered by Sessions Judge—Jurisdiction to make such order* Where the

ordered a judicial enquiry by the Deputy Magistrate and after considering his report directed that the case should be entered as false as the outcome of a civil dispute; and then the opposite

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s 435—*concld*

party moved the Sessions Judge who ordered a further enquiry under s 437, Cr P C *Held*, *that having regard to the provisions of sec 435, sub s (4)*, Cr P C, the Sessions Judge should not have ordered further enquiry into the complaint The order of the Deputy Magistrate, dated the 28th November 1911, must be regarded as an order dismissing the

sioner proceeded to revise the Deputy Magistrate s order and have a further enquiry made, it must be taken that he was acting under s 435, Cr P C SIDDIK v CHAKAURI KHANSAMA (1913)
17 C W. N. 451

——— s 439

1. ——— *Revision—Powers of High Court—District Registrar* A District Registrar is not a Court subordinate to the High Court either on the civil, criminal or revenue side, and the High Court has no power to interfere with the order of the Registrar impounding a document and calling upon the applicants to show cause why they should not be prosecuted for forgery EMPEROR v UDIT NARAIN DUBE, (1912)
I. L R 35 All 109

2 ——— *Revision on facts,—Practice of the High Court and its powers under the law—When High Court should consider evidence in revision—Civil Procedure Code (Act V of 1908), s 100—Indian Penal Code (Act XLV of 1860), s 211—Nature of proof necessary* Per MOOKERJEE J—Applications for revision in

Court is bound by the rigid provisions of s 100, C P C to act on findings of fact embodied in the

not hesitate to do so

ing is manifestly erroneous and a miscarriage of justice would result from it if left uncorrected *Beldhos* v *Queen*, *12 B L R 219*, *Buran Saheb* v *King Emperor*, *6 Bom L R 1069*, referred to Observations of Jenkins, C J, in *Bankatram* v. *King Emperor*, *I L R 28 Bom 533, 566*, quoted with approval The application of the observations of the Judicial Committee in *Mirza Sajjad*

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

———— s. 439—*concld.*

Hussain v. *Nawab Wazir Ali Khan, 16 C. W. N. 889*, that Judges in India must not have "impliedly the duty laid upon them of making their narrative of the circumstances minutely and completely exhaustive under the penalty that if they failed to do so the absence from their minds of elementary considerations might be presumed," is not to be extended to criminal cases. A critical examination of the judgments of the subordinate Courts is not of much assistance when the High Court proceeds to revise the findings of fact of the lower Courts. A much safer course is to obtain a broad and comprehensive view of the facts of the case and then to ascertain whether there has been a failure of justice. *Rama Nath Kalapahar* v. *King-Emperor, 2 C. L. J. 521*, referred to. In a case under s. 211, Penal Code, failure on the part of the complainant to establish the truth of his allegation does not by any means justify the inference that the complaint was false; and to secure a conviction in this class of cases it must further be established beyond reasonable doubt that the circumstances are not merely consistent with the guilt of the accused but entirely inconsistent with his innocence. *Per* CARNDUFF, J. The observations of the Judicial Committee in *Mirza Sajjad Husain* v. *Nawab Wazir Ali Khan, 16 C. W. N. 889*, may well be given a wider application and are especially relevant in respect of judgments of affirmance even in criminal cases. *Per* IMAM, J. It is not usual for the High Court in revision to discuss a case on its facts though it is open to it to do so. RAM PROSAD *v.* THE KING-EMPEROR (1912).

17 C. W. N. 379

———— **ss. 439, 476.**

See HIGH COURT, JURISDICTION OF.

I. L. R. 40 Calc. 477

———— **s. 476.**

See "CERTIORARI."

I. L. R. 36 Mad. 72

See COLLECTOR. **I. L. R. 40 Calc. 465**

1. ———— *Order under, by Civil or Revenue Court if may be revised by High Court under s. 439—Civil Procedure Code (Act V of 1908), s. 115—High Courts Act 24 & 25 Vict., C. 104, s. 14.* In the case of an order passed under s. 476, Cr. P. C., by a Civil or a Revenue Court, s. 439, Cr. P. C., has no application, but such an order can be revised by the High Court under s. 115 of the Civil Procedure Code or under s. 15 of the High Courts Act 24 & 25 Vict., C. 104. An order made by a Criminal Court under s. 476, Cr. P. C., is liable to revision by the High Court under s. 439, Cr. P. C. S. 439, Cr. P. C., is to be read along with and subject to the provision of s. 435, Cr. P. C. Where an order under s. 476 made by a Civil or a Revenue Court is sought to be revised by the High Court, the Bench exercising Criminal Jurisdiction cannot as such deal with the matter but the Judges composing that Bench may do so if authorised by the Chief Justice under s. 14 of the High Courts Act. HAR PRASAD DAS *v.* THE EMPEROR (1913).

17 C. W. N. 647

2. ———— *Acquittal of the accused by one Magistrate, order for prosecution of the complainant by another, without jurisdiction—Belated order under s. 176, Cr. P. C., no independent judicial opinion.* Where the persons complained against by the petitioner were tried and acquitted by a Deputy Magistrate on the 1st August and a week later another Deputy Magistrate called on the petitioner to show cause why he should not be prosecuted under s. 211, Penal Code, and finally on the 23rd August directed his prosecution under s. 476, Cr. P. C., but subsequently on the District Magistrate observing that the order for prosecution ought to be made by the Magistrate who tried the accused persons, the trying Magistrate on the 16th September passed the following order—"Petition purporting to show cause against prosecution under s. 211 filed. The cause shown is not good; draw up proceedings under s. 211, I. P. C."—This order purporting to be made under s. 476, Cr. P. C., although the accused persons had applied for the prosecution of the petitioner: *Held*, that there was no judicial proceeding of any sort or kind before the Magistrate who made the order of the 23rd August, and his order for the prosecution of the petitioner was altogether beyond his jurisdiction. That the belated order of the 10th September did not represent the independent judicial opinion of the Magistrate, who made it. If he had thought that action ought to be taken under s. 476, Cr. P. C., he ought to have passed the order one and a half months before and the fact that he did not do so indicated very clearly that he did not at the time think it necessary. There may be cases in which a Court may not think it necessary in the public interest to take action under s. 476, Cr. P. C., but may be willing to allow the person injured to seek redress. In such a case, it is not necessary that the order should be passed at or near the time of the disposal of the original case. *Held*, however, in the present case, that even treating the order of the 16th September, as one made under s. 195, Cr. P. C., the further prosecution of the petitioner should not be sanctioned, considering how illegally and unnecessarily he has been harassed in these proceedings. BHIM LAL SHAH *v.* EMPEROR (1912) . . . **17 C. W. N. 290**

3. ———— *Information before Police reported false—Informant called upon by Magistrate to prove his case—Order for prosecution under s. 211, Penal Code—Jurisdiction to make such order.* The petitioner lodged an information with the Police, who reported it to be false. The petitioner made no complaint in Court, but the Sub-Divisional Magistrate on receipt of the police-report passed the order "complainant to prove

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 476**—*concld.*

his case" and made over the case for disposal to another Magistrate who ultimately made an order *under s 476, Cr P C, against the petitioner Held*, that the order of the Sub Divisional Magistrate and the proceedings held thereunder do not come within any of the provisions of the Code of Criminal Procedure and the order for prosecution was without jurisdiction SARBA MAHTON *v* THE EMPEROR (1913) . **17 C W. N. 824**

——— **s 488**—*Maintenance order if can be enforced against estate of deceased husband* After the death of the person against whom an order for maintenance was made there is no claim enforceable under s 488, Cr P C, against the estate of the deceased and the order for maintenance cannot be enforced in respect of arrears accrued due during the lifetime of the person who was ordered to pay maintenance EAD ALI *v* LAL BIBEE (1913) . **17 C. W. N 1130**

Procedure gives to an Appellate Court the same power as the Court which originally tried a case to pass orders under s 517 of the Code *Baloram Gogai* v *Chintaram Kohta, 9 C W N 549*, followed *In re Deidin Durgaprasad, I L R 22 Bom 844*, distinguished EMPEROR *v* AZMAT SHAH KHAN (1913)
I. L. R. 35 All. 374

——— **s. 526.**

1 ——— *Transfer—Nature of grounds warranting a transfer outside the district* Where the Magistrate of a district refused to grant an interview to, and cancelled the arms license of, a person who was under trial for various offences before the Joint Magistrate, it was *held* that these were sufficient reason for transferring the cases against him out of the district there being also grounds for granting a transfer from the Court of the Joint Magistrate *Farzand Ali* v *Hanuman Prasad, I L R 19 All 64*, followed EMPEROR v RAM KISHAN DAS (1913)
I L. R. 35 All. 5

2. ——— *Transfer—Rule from High Court staying further proceedings—Telegram by the party effect of—Issue of warrant*

any way absolve the obligation of the petitioner to appear before the Court on the date fixed and the issue of the warrant upon the petitioner was no ground for transfer of the case The inconvenience of transferring a preventive proceeding for trial from one district to another adverted

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*concld*

——— **s 526**—*concld*

to CHANDI PROSHAD SINGH *v* THE KING EMPEROR (1912) . **17 C. W. N. 536**

——— **ss 535, 537** (*a*).

See CHARGE **I. L. R. 40 Calc 168**

——— **s 537.**

See UNITED PROVINCES EXCISE ACT (IV OF 1910), s 63 **I L. R. 35 All. 358**

CRIMINAL PROCEEDINGS.

See LEAVE TO APPEAL TO PRIVY COUNCIL **L R. 40 I. A. 241**

See PRACTICE **L. R 40 I. A. 241**

CRIMINAL REVISION.

——— *Dismissal of complaint reasons for—Criminal Procedure Code (Act V of 1898), s 203—Grounds not taken in the first Court of Revision might be taken in the High Court—Government Circular, its effect—Statute law—Practice* Grounds, which were not urged in the first Court of Revision, might be taken in the High Court Under s 203 of the Criminal Procedure Code (Act V of 1898) reason for dismissing the complaint must be recorded. No circular of the Government can authorize Magistrates to infringe, or in any way alter, the statute law. MANIRUDDIN SIRCAR *v* ABDUL RAUF (1912)
I. L R 40 Calc. 41

CROSS OBJECTIONS

See CIVIL PROCEDURE CODE (ACT V OF 1908), O XLI, R 22
I L R 37 Bom. 511

CULPABLE HOMICIDE.

See PENAL CODE (ACT XLV OF 1860), ss 37, 302, 304
I. L. R. 35 All. 506, 560

CUMULATIVE SENTENCES.

——— *Rioting—Separate sentences for rioting and causing hurt—Penal Code (Act XLV of 1860), ss 147, 323* Separate sentences for the offences of rioting and hurt are legal where it is found that each person took an individual part in the assault *Nilmony Poddar* v *Queen-Empress, I L R 16 Calc. 442, Mohur Mir* v *Queen Empress, I L R 16 Calc 725, Ferasat* v *Queen Empress, I L R 19 Calc 105*, referred to RAM ANGUTHA SINGH *v* EMPEROR (1913)
I. L R. 40 Calc. 511

CUSTOM

See ADOPTION **I. L. R. 40 Calc. 879**

See AGARWAL BANIAS OF ZIRA
I. L. R. 40 Calc. 879

See PRE EMPTION **I. L R. 35 All. 472**

——— *of inalienability—*

See IMPARTIBLE ZAMINDARI
I. L. R. 36 Mad. 325

CUTCHI MEMONS.

See MAHOMEDAN LAW—MAINTENANCE.
I. L. R. 37 Bom. 71

D

DAMAGE.

See INSURANCE . **I. L. R. 37 Bom. 183**

DAMAGES.

——— suit for—

See LIMITATION **I. L. R. 40 Calc. 898**

——— too remote—

See DAMAGES IN ACTIONS ON TORT.
I. L. R. 36 Mad. 580

DAMAGES IN ACTIONS ON CONTRACT.

——— principle of—

See DAMAGES IN ACTIONS ON TORT.
I. L. R. 36 Mad. 580

DAMAGES IN ACTIONS ON TORT.

——— *Principle of assessing—Damages, too remote, cannot be recovered—Principle of assessing damages in actions on contract compared—Duty of plaintiff to take means to reduce the damages—Easements Act (V of 1882), s. 33.* In a suit for damages sustained by the plaintiff in consequence of the defendant's obstruction of the plaintiff's right to way of his field, owing to which the plaintiff did not cultivate his lands, their Lordships *held,* (i) that non-cultivation of the lands was too remote a consequence of the defendant's wrongful act of obstruction as the plaintiff had not shown that there were no other means of cultivating and that it was in consequence of the wrong it was not reasonably possible for him to cultivate ; (ii) that damages for the loss of crops could not be given, but that all that he was really entitled to was the extra cost which he would be put to for the cultivation of his land in consequence of the right of way being obstructed ; and (iii) that the plaintiff was entitled to substantial damages for interference with the evidence of his right. Sedgwick on Damages, paragraphs 202 and 215, referred to. S. 33 of the Easements Act (V of 1882) and *Baijnath Singh v. Tetai Chowdry, 6 C. W. N. 197,* applied. *Per* CURIAM : Though the rule is the same in actions on contract and in tort, *viz.,* that the damages which the plaintiff is entitled to must result directly from the wrongful act of the defendant and that no claim can be made to damages which are only too remotely connected with it, there may be differences in the application to actions on tort of this basic principle which is common to both kinds of actions ; in a contract it is the duty of the plaintiff as a prudent man to take measures to reduce the damages as far as possible, for a breach of contract consists in the defendant's failure to do a certain act that he is bound to do and it would be quite open to the plaintiff to take other measures to obtain the result he expected from the defendant's performance ; a tort, on the other hand, may consist in the defendant's

DAMAGES IN ACTIONS ON TORT—*concld.*

failing to do an act which he is bound to do or in doing one which he ought not to do or in preventing the plaintiff from doing an act which he is entitled to do. KARIBASAVANA GOWD *v.* VEERABHADRAPPA (1913) . . **I. L. R. 36 Mad. 580**

DAMDUPAT.

See LIMITATION **I. L. R. 37 Bom. 326**

——— *Decree in mortgage-suit between Hindus—Interest accruing after date fixed for redemption, whether rule applicable to.* The rule of *damdupat* applies to Hindus only so long as the relation between the parties is contractual, and ceases to apply when the matter has passed from the realm of contract into that of judgment. Where a decree has been passed on a mortgage, the rule does not apply to the interest accruing after the date fixed for redemption. *In the matter of Hari Lall Mullick, I. L. R. 33 Calc. 1269,* followed. *Ram Kanye Audhicary* v. *Cally Churn Dey, I. L. R. 21 Calc. 840,* not followed. *Sundar Koer v. Sham Krishen, I. L. R. 34 Calc. 150 L. R. 34 I. A. 9,* referred to. NANDA LAL ROY *v.* DHIRENDRA NATH CHAKRAVARTI (1913)
I. L. R. 40 Calc. 710

DANABANDI AND BATAI SYSTEMS OF TENANCY.

——— *Presumption as to contract of tenancy from contract of tenancy in respect of adjoining lands—Record of rights published after institution of suit, if can be relied on—Non-attendance of landlord at apportionment—Liability of tenant if he appropriates whole of crops—Bengal Tenancy Act (VIII of 1885), s. 69.* The plaintiff claimed that certain lands were held by the tenants under the *danabandi* system but the Courts below found that they were held under the *batai* system. In two other suits against the tenants of the same village the Court found that the tenants held under the *danabandi* system. There was no proof that there was an invariable custom prevalent in the village. The lower Appellate Court in deciding the case relied upon the record-of-rights which was finally published long after the institution of the suit: *Held,* that the mere circumstance that the contract of tenancy in respect of some land was of one description does not necessarily indicate that the contract was of the same description in respect of different lands in the same village held by other tenants, and the Court was free to conclude upon the evidence that the lands were held under the *batai* system. That the lower Appellate Court did not act improperly in relying on the record-of-rights. KAMALESHWARI PERSHAD SINGH *v.* KANHARI SINGH (1913). . **17 C. W. N. 1159**

DASTUR DEHI.

See PRE-EMPTION . **I. L. R. 35 All. 478**

DAUGHTER.

See HINDU LAW—DAUGHTERS' ESTATE.
I. L. R. 35 All. 481

1 ... *r* ... *f* ... *at on of— vious su t* which had the judg nedies for correcting the decree which were open to them by law by reason of their omission to ascertain the the *ma Ga v* di Singh *v* Dowlat Ray (1912)
17 C W N 82

DECREE—*concld*

2 ——— A decree must be self contained and must be executed as it stands If it is not in accordance with the judgment application should be made for its amendment Bhikari Sukul *v* Gadadhar Pamanuj Das (1912) 17 C W N 87

3 ——— *Preliminary in suit for accounts appeal against—Final decree made pending appeal—Preliminary decree set aside on appeal —Application to execute final decree—Executing Court if can treat the final decree as superseded though not formally set aside* On 21st March 1908 a preliminary decree was passed directing the defendant to render accounts to the plaintiff On 21st May the defendant preferred an appeal and did not thereafter appear in the proceedings for taking accounts which went on in the first Court and did not take any part in those proceedings which ended in a decree in favour of the plaintiff for a definite sum on the 28th May 1908 On 11th August 1908 the Appellate Court set aside the preliminary decree holding that the defendant was not bound to render any account and that decree was affirmed by the High Court in second appeal on 30th August 1910 On 22nd February 1911 the plaintiff having applied for execution of the final decree of 28th May 1908 *Held* that the passing of the final decree did not take away the jurisdiction of the Appellate Court to hear the appeal against the preliminary decree *Macken e v Narsinga Sahai 10 C L J 113 Baikuntha Nath v Salimulla 6 C L J 547* and *Madhusudan v Ka n ni Ka ta I L R 32 Calc 1123* distinguished That the final decree which was dependent on and subordinate to the preliminary decree was superseded by the decision of the Appellate Court setting aside the preliminary decree and it was not necessary for the defendant to have the final decree formally set aside That it was competent to the executing Court to refuse to execute the final decree on the ground that it had been superseded and ceased to be operative Ram Nath Singh *v* Basanta Narain Singh (1913)
17 C W N 666

DEFAMATION.

See PENAL CODE, s. 499
I. L. R. 36 Mad. 216

———— *Statement by accused made in application to District Magistrate for transfer of case—Absolute or qualified privilege—English law, applicability of, in the mofussil—Construction of Statues—Penal Code (Act XLV of 1860), s. 499.* S. 499 of the Penal Code is exhaustive; and if a defamatory statement does not fall within the specified Exceptions, it is not privileged. The English common law doctrine of absolute privilege does not obtain in the mofussil in India. A defamatory statement made in bad faith by an accused, against whom a trial is pending in a Criminal Court, and contained in a petition to the District Magistrate for a transfer of the case, is not absolutely privileged, but is punishable under s. 499 of the Penal Code: *Green v. Delanney, 14 W. R. Cr. 27, Augada Ram Shaha v. Nemai Chand Shaha, I. L. R. 23 Calc. 867,* and *Kali Nath Gupta v. Gobind Chandra Basu, 5 C. W. N. 293,* followed. *Patarqju Venkata Reddy v. Emperor, 13 Cr. L. J. 275,* dissented from. *Babu Gunnesh Dutt Singh v. Mugneeram Chowdhary, 11 B. L. R. 321, Bhikumber Singh v. Becharam Sircar, I. L. R. 15 Calc. 264, Woolfun Bibi v. Jesarat Shaikh, I. L. R. 27 Calc. 262, Golap Jan v. Bholanath Khettry, I. L. R. 38 Calc. 880,* distinguished. *Haidar Ali v. Abru Mia, I. L. R. 32 Calc. 756,* referred to. *Kari Singh v. Emperor, I. L. R. 40 Calc. 441* (note), explained. The proper course in construing an Act is to ascertain the natural meaning of its language, and not to assume that it was intended to leave the existing law unaltered, except when such intention is stated: *Bank of England v. Vagliano, [1891] A. C. 107,* and *Norendra Nath Sircar v. Kamalbasini Dasi, I. L. R. 23 Calc. 563,* followed. The essence of a Code is to be exhaustive in the matters in respect of which it declares the law, and it is not the province of a Judge to disregard or go outside the letter of the enactment according to its true construction: *Gokul Mandar v. Pudmanund Singh, I. L. R. 29 Calc. 707,* followed. KARI SINGH *v.* EMPEROR (1912)
I. L. R. 40 Calc. 433

DEFENDANT.

———— **right to offer evidence.**

See PRACTICE . **I. L. R. 40 Calc. 119**

DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879).

———— s. 2—

1. ———— *Agriculturist—Definition—Estate of agriculturist in charge of Court of Wards—The Court of Wards is an agriculturist—Court of Wards Act (Bom. Act I of 1905).* A Court of Wards constituted under the Court of Wards Act (Bom. Act I of 1905) and representing the estate of a minor agriculturist is entitled to bring a suit under the provisions of the Dekkhan Agriculturist's Relief Act (XVII of 1879). The Dekkhan Agriculturists' Relief Act countenances no distinction based upon the comparative riches or poverty of the person whose status is being investigated. MANOHAR RAMCHANDRA *v.* COLLECTOR OF NASIK (1912)
I. L. R. 37 Bom. 97

DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879)—*contd.*

———— s. 2—*concld.*

2. ———— *Agriculturist—Definition—Person engaging himself personally in agricultural labour is an agriculturist irrespective of his income from other sources—Bharwad or shepherd—Pastoral income.* A person who ordinarily engages personally in agricultural labour within certain specified limits is an agriculturist as defined by s. 2 of the Dekkhan Agriculturists' Relief Act, 1879, irrespective of the proportion which his strictly agricultural income may bear to any other income accruing to him. A *bharwad* (shepherd) who engages personally in agricultural labour is an agriculturist although his income from non-agricultural (*i.e.* pastoral) sources may be greater than his other income. BHIKHA FAKIRA *v.* RAICHAND MANJI (1912)
I. L. R. 37 Bom. 398

———— s. 15B—*Civil Procedure Code (Act V of 1908), O. XXIII, R. 3—Agriculturist mortgagor—Suit for account of principal and interest—Decree in terms of a compromise—Compromise made without compliance with the special provisions of the Dekkhan Agriculturists' Relief Act—Compromise valid. Held* by the Full Bench, that a compromise in a suit which came under the Dekkhan Agriculturists' Relief Act (XVII of 1879) was not bad in law because it was made without compliance with the special provisions (s. 15B) of that Act. SHIVAYAGAPPA *v.* GOVINDAPPA (1913) . **I. L. R. 37 Bom. 614**

———— s. 20—*Court—Instalments, power to grant—Status of agriculturist not at the date of decree, but in execution proceedings.* The Court has no power to grant instalments, under s. 20 of the Dekkhan Agriculturists' Relief Act (XVII of 1879), in the case of a judgment-debtor who was not an agriculturist when the decree was obtained, but who becomes one at the time of the execution by limiting himself exclusively to profits in land. BALCHAND CHATURCHAND *v.* CHUNILAL JAGJIVANDAS (1913) . **I. L. R. 37 Bom. 486**

———— s. 22—*Decree—Execution—Agriculturist—Exemption from liability to attachment or sale—Absence of proof of exemption—Jurisdiction of the Court to order sale—Civil Procedure Code (Act V of 1908), s. 60.* S. 60 of the Civil Procedure Code (Act V of 1908) lays down the general rule that property liable to attachment and sale in execution of a decree is lands, houses, etc., belonging to the judgment-debtor. An agriculturist, in order to resist the application of that general rule, must prove that he belongs to the privileged class so as to render s. 22 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) applicable to his case. In the absence of such proof the exemption from liability to attachment or sale does not exist for the purpose of exe-

DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879)—*concld*

——— s. 22—*concld.*

cution proceedings and the executing Court has, therefore, complete jurisdiction to make the order for sale. NARAYAN ANANDRAM *v.* GOWBAI (1912) I. L. R 37 Bom. 415

DELEGATION.

——— nazir's power of—

See ATTACHMENT. I. L R. 40 Calc. 849

——— by Collector—

See REVENUE JURISDICTION ACT, BOMBAY (X OF 1876), ss. 4 (c), 5 AND 6 I. L. R. 37 Bom. 542

DELIVERY

See SALE OF GOODS. I. L. R. 40 Calc. 523

——— taking of—

DISHONESTLY RECEIVING STOLEN PROPERTY . I. L. R. 40 Calc. 990

DEPOSIT.

——— by judgment-debtor—

See RATEABLE DISTRIBUTION I. L. R. 40 Calc. 619

——— order to make—

See PRESS ACT (I OF 1910), s 3 I. L R. 37 Bom. 555

DEPUTY COLLECTOR.

See COLLECTOR I. L. R. 40 Calc. 465

DEPUTY COMMISSIONER.

——— order of—

See HIGH COURT, JURISDICTION OF I. L R. 40 Calc. 518

DEPUTY MAGISTRATE.

See PUNITIVE POLICE I. L. R. 40 Calc. 452

DESHMUKHI VATAN.

See HEREDITARY OFFICES ACT (BOM ACT III OF 1874), ss 11, 11A I. L. R 37 Bom. 37

DESHPANDE KULKARNI VATAN.

See PENSIONS ACT (XXIII OF 1871), s 4 I. L. R. 37 Bom. 91

DISCHARGE

——— order of, by High Court—

See JURISDICTION OF CRIMINAL COURT I. L. R. 40 Calc. 71

DISCHARGE BY ATTORNEY.

See ATTORNEY AND CLIENT I. L. R. 40 Calc. 386

DISCIPLINARY ACTION.

See INSTRUCTIONS TO COUNSEL I L. R. 40 Calc. 898

DISCIPLINARY JURISDICTION.

See BOMBAY REGULATION (II OF 1827), s. 56 . I. L. R. 37 Bom. 354

DISCRETION.

See LIMITATION I. L. R. 37 Bom. 326

See PLEADERSHIP EXAMINATION I. L. R. 40 Calc. 588

——— of trustee—

See RELIGIOUS TRUST. I L. R. 40 Calc. 232

DISHONESTLY RECEIVING STOLEN PROPERTY.

——— *Receipt of property—Production of the railway receipt, payment of freight and taking of formal delivery—Property not actually removed, or attempted to be removed, from railway premises—Penal Code (Act XLV of 1860)*

were then lying, nor made any attempt to do so, and that he had received them within s 411 of the Penal Code *Reg* v *Hill, 3 Cox C C 533, 1 Den C C 453,* distinguished SHEWDHAR SUKUL *v* EMPEROR (1913) I L. R. 40 Calc. 990

DISMISSAL OF COMPLAINT.

——— reasons for—

See CRIMINAL REVISION I. L. R. 40 Calc. 41

DISPUTE CONCERNING LAND.

——— *Ijmali property — Claim by co sharers to exclusive possession of specific plots—Jurisdiction of Magistrate—Criminal Procedure Code (Act V of 1898), s 145* A Magistrate has jurisdiction, under s 145 of the Criminal Procedure Code in the case of *ijmali* land, where each party claims to be in exclusive possession of specific portions of the same Under s 145 the question for the Magistrate's decision is not whether the parties have a title to possession jointly, or a title to possession separately, but whether either of them is in actual possession. Co sharers in an *ijmali* estate may, by express or tacit arrangement, be each separately in actual possession of specific or demarcated portions of the same, and s 145 applies to such a case When, however, the parties are found to be not constructively but actually in joint possession, the section has no application. *Malhan Lal Roy v. Barada Kanta Roy, 11 C. W. N 512,* explained and distinguished. *Per* HARINGTON *J.* Where a party alleges exclusive possession

DISPUTE CONCERNING LAND—*concld.*

and acquiesces in the hearing of the case on that footing, he cannot afterwards be heard to say that the whole proceedings are bad because the land is *ijmali*. BASANTA KUMARI DASI *v.* MAHESH CHANDRA LAHA (1913) . **I. L. R. 40 Calc. 982**

DISTRIBUTION.

——— period of—

See WILL . **I. L. R. 40 Calc. 274**

DISTRICT DEPUTY COLLECTOR.

See MAMLATDARS' COURTS ACT (BOM. ACT II OF 1906), s. 23.
I. L. R. 37 Bom. 595

DISTRICT MUNICIPALITIES ACT (BOM. ACT III OF 1901).

——— s. 22—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 195
I. L. R. 37 Bom. 365

DIVORCE.

See HINDU LAW—MARRIAGE.
I. L. R. 37 Bom. 295

——— *Husband's petition—Foreign domicile—Divorce Act (IV of 1869)—Territorial jurisdiction.* The husband, who was an Italian subject with an Italian domicile, instituted proceedings for divorce on the ground of his wife's adultery. The marriage had been solemnized in India, and the parties were residing in British India: *Held*, that, under the provisions of the Indian Divorce Act, the Court was bound to grant a divorce on proof of adultery, although the divorce would have no effect outside India. *LeMesurier* v. *LeMesurier*, [1895] A. C. 517, and *Shaw v. Gould*, L. R. 3 E. & I. App. 55, referred to. GIORDANO *v.* GIORDANO (1912)
I. L. R. 40 Calc. 215

DIVORCE ACT (IV OF 1869.)

See DIVORCE . **I. L. R. 40 Calc. 215**

——— s. 3 (2). *Political Resident at Aden—District Judge—Jurisdiction to try suits under Indian Divorce Act—Aden Courts Act (II of 1864), s. 3.* The political Resident at Aden, not having been appointed "a Commissioner of a Division" is not a District Judge as defined in s. 3, sub-s. (2), of the Indian Divorce Act, 1869, and has no jurisdiction to try suits under the Act. MOUNA *v.* MOUNA (1912) . . **I. L. R. 37 Bom. 57**

DOCTRINE OF SATISFACTION.

——— *Inapplicability in India of doctrine of satisfaction—Indian Succession Act (X of 1865), s. 164—General applicability in India of the principles of the Indian Succession Act in so far as they are not overriden by some special provision of local law or usage—Khojas—Law applicable to Khoja wills—The Indian Evidence Act (I of 1872), s. 92.* The plaintiff claimed to be entitled to a sum of money deposited by him with one Karmali Moledina, deceased, a Khoja

DOCTRINE OF SATISFACTION—*concld.*

Mahomedan, and also to a legacy under the will of Karmali Moledina. He therefore sued the executors of the will of Karmali Moledina for a declaration to that effect and for the administration, if necessary, of the estate of Karmali Moledina. The defendants maintained, *inter alia*, that the legacy must be taken as intended as payment of the balance due on the deposit by the plaintiff from Karmali Moledina and that the plaintiff could not claim both the legacy and the debt. *Held*, that, inasmuch as the principles of interpretation announced in the Indian Succession Act were intended by the Legislature to be universally applicable unless overriden by some special provision of local law or usage, the doctrine of satisfaction which is abolished by s. 164 of the Indian Succession Act, must be considered as exploded in India. *Held*, further, that if it be considered that the wills of Khojas are governed by Hindu Law, the will of Karmali Moledina would be governed by s. 164 of the Indian Succession Act, but if such wills are governed by Mahomedan Law, the will would have to be interpreted in accordance with the provisions of the general law of evidence, and, in particular, would be governed by the provisions of s. 92 of the Indian Evidence Act, and that in either case the defence set up under the doctrine of satisfaction would be defeated. *Quære*: Whether the wills of Khojas are governed by Hindu or Mahomedan Law. HASSONALLY MOLEDINA *v.* POPATLAL PARBHUDAS (1912) . . . **I. L. R. 37 Bom. 211**

DOMICILE.

See DIVORCE . **I. L. R. 40 Calc. 215**

E

EASEMENT.

1. ——— *Flow of water over servient tenement in a definite channel, if necessary for acquiring right of easement.* The fact that water flows over the surface of the servient tenement without a definite channel for its carriage, cannot prevent the acquisition of an easement. *Bidhu Bhusan Palit* v. *Beny Madhab Mazumdar*, *8 C. W. N. 244*, overruled. MUNSHI MISSER *v.* BHIMRAJ RAM (1913) . **I. L. R. 40 Calc. 458**

2. ——— *Overhanging eaves for discharge of water—Easement and not tresspass.* The possession of a *panch* or eaves for discharge of water overhanging the defendant's land is an easement and not an occupation of defendant's property. CHOTALAL HIRACHAND *v.* MANILAL GAGALBHAI (1913)
I. L. R. 37 Bom. 491

3. ——— *Discharge of water stopped by owner of dominant tenement—Servient owner if may complain—Defined channel on dominant tenement, effect of.* An easement exists for the benefit of the dominant tenement alone, and the servient owner acquires no right to

EASEMENT—*concld.*

insist on its continuance or to ask for damages [illegible] the servient tenement. AFTAB CHOWDHURY *v* ASOKHADEM (1913) . . 17 C. W. N. 1066

EASEMENTS ACT (V OF 1882).

——— s. 33—

See DAMAGES IN ACTIONS ON TORT. I. L. R. 36 Mad. 580

EAVES.

See EASEMENT . I. L. R. 37 Bom. 491

EJECTMENT.

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 111. I. L. R. 35 All. 145

——— *Chota Nagpur Tenancy Act (Beng. VI of 1908), ss. 4 (3), 41—Non occupancy raiyats—Under raiyats, ejectment of—Transfer of property Act (IV of 1882), s. 106—Incidents of tenancy created by contract or custom—Verbal notice, sufficiency of.* Where a raiyat sued an under-raiyat in ejectment and got a decree but, [illegible]

Act had not been complied with, as an under-raiyat has at least the rights of a non occupancy raiyat: *Held*, that the view taken by the Judicial Commissioner was erroneous An under raiyat must, for the purposes of that Act, be treated as belonging to a class of tenants quite distinct from the class of non occupancy raiyats Those portions of that Act which dealt with tenants generally could be applied to under raiyats In a suit for ejectment of an under raiyat, by a raiyat the Court can have regard only to the relations established between the parties either by contract or custom Where there is no evidence of a lease, the tenancy would no doubt be ordinarily held to be a tenancy from year to year. There is no statutory provision that the tenancy of an under raiyat in Chota Nagpur can be terminated only by a notice in writing. GURU CHARAN HAJAM *v* SUKLAL HAJAM, (1913) I. L R. 40 Calc 858

ELECTION.

See NORTH-WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT (XV OF 1883), s 10 I. L. R. 35 All. 308

See SALE OF GOODS. I. L. R. 40 Calc. 523

ELECTION PETITION.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 195 I. L. R. 37 Bom. 385

ENDOWMENT.

See COURT FEE . I. L. R. 40 Calc 245

See HINDU LAW —ENDOWMENT. I. L. R. 35 All. 283

ENDOWMENT—*concld*

See LIMITATION . I. L. R. 37 Bom. 231

See MAHOMEDAN LAW—ENDOWMENT I. L. R. 40 Calc. 297

See RELIGIOUS TRUST I. L R 40 Calc. 251

ENGLISH CASE.

——— *Decisions in, how far* [illegible] their being consistent with principles of justice equity and good conscience MANJHOORI BIBI *v* AKEL MAHUMED, (1913). . 17 C. W. N 869

ENGLISH LAW.

——— applicability of—

See DEFAMATION I. L. R. 40 Calc. 433

ENGLISH RULE.

See STANDARD OF PROOF I. L. R. 40 Calc. 898

ENCUMBRANCE.

See EXECUTION OF DECREE I. L. R. 40 Calc. 623

ENHANCEMENT OF RENT.

See CHOTA NAGPUR TENANCY ACT, 1908, s 27 I L. R. 40 Calc 518

See SUIT I. L. R. 40 Calc. 428

——— *Bengal Tenancy Act (VIII of 1885), s 30—Landlord of a holding, meaning of—Res judicata—Civil Procedure Code (Act XIV of 1882), s 13—Matter directly and substantially in issue what constitutes* The plaintiff and the defendants were howladers of a property The defendants took a raiyat lease from the plaintiff of his undivided share of the howla Upon a suit brought by the plaintiff under s 30 of the Bengal Tenancy Act for enhancement of rent against the defendant *Held*, that the plaintiff was not the landlord of a "holding" within the meaning of s 30 of the Act, and as such the suit was liable to be dismissed *Haribole Brohmo* v *Tasimuddin Mondul, 2 C W N 680*, followed In a previous suit between the parties for enhancement of rent, it was decided that the plaintiff had the right to enhance the rent of the defendants, but the suit was dismissed on the ground that the rent paid by the defendants, was not lower than the rate at which rent was paid by tenants of adjoining lands In a subsequent suit between the same parties, the question was raised by the plaintiff that his right to enhance the rent of the defendants was *res judicata*. *Held*, that inasmuch as the decision upon the question of the right of the plaintiff to enhance the rent was not the basis of the decree ultimately made in the previous suit, it was not *res judicata* between the parties PARBATI DEBI *v* MATHURA NATH BANERJEE (1912) . . I. L. R. 40 Calc. 29

ERRONEOUS ORDER.

——— on a question of law—

See LIMITATION ACT (XV OF 1877), SCH. II, ARTS. 178 AND 179
I. L. R. 36 Mad. 553

ERROR, OMISSION OR IRREGULARITY.

See CHARGE **I. L. R. 40 Calc. 168**

ERROR OF LAW.

See CHARGE . **I. L. R. 40 Calc. 168**

ESTATES LAND ACT (MAD. I OF 1908).

——— s. 3, cl. (*7*) and 6, cl. (*1*)—"*Final decree*" *in s. 3, cl.* (*7*), *meaning of. Held*, by the Full Bench as follows—where an appeal from a decree in ejectment passed under the old law is heard after the commencement of Madras Act I of 1908 (Estates Land Act) the defendant being a ryot in possession of ryot land on such date, he is entitled to claim a right of occupancy under section 6, clause (*1*) of the Act notwithstanding the original decree. The words "final decree" in the last sub-clause of section 3, clause (7) mean a decree which is not under appeal or liable to be set aside or modified on appeal. *Obiter* : CHIEF JUSTICE—It is clear that where a landlord obtains a decree in ejectment before the commencement of the Act and executes it before the commencement of the Act the ryot could not claim the benefit of the first part of section 6. *Obiter* : KRISHNASWANI AYYAR J.—"The final decree of a competent civil Court referred to in the definition of old waste" in section 3, clause (7), is a decree obtained in a proceeding independent of that in which the question of occupancy right is dealt with under section 6, clause (*1*), or the presumption under section 23 is made. The presumption under section 23 applies to all suits or appeals whether pending at the date of the commencement of the Act or instituted thereafter. KANAKAYYA *v.* JANARDHANA PADHI. (1913)
I. L. R. 36 Mad. 439

ESTOPPEL.

See ADVERSE POSSESSION.
I. L. R. 40 Calc. 173

See CIVIL PROCEDURE CODE 1882 s. 287 (*c*) . **I. L. R. 35 All. 257**

See LANDLORD AND TENANT.
I. L. R. 36 Mad. 53

See MORTGAGE . **I. L. R. 40 Calc. 534**
I. L. R. 35 All. 353

See NOTICE . **I. L. R. 140 Calc. 503**

See TRADE-MARK **I. L. R. 40 Calc. 814**

See WAKF . **I. L. R. 37 Bom. 447**

——— *Evidence Act* (*I of 1872*) *s. 115—Sale to plaintiff by B, of land as his—Attestation by A with knowledge of the contents, when he was the owner, effect of—Civil Procedure Code* (*Act XIV of 1882*), *s. 317—'Fraudulently.'* If *A*, with the knowledge that the recital in a sale-deed that

ESTOPPEL—*concld.*

the land thereby conveyed belongs to *B* and is in his (*B*'s) enjoyment as owner, attests the sale-deed executed by *B* in favour of the plaintiff he is estopped from setting up thereafter his title to the land, even though he (*A*) might be the certified purchaser of the same in Court auction. *Sarat Chander Dey* v. *Gopal Chunder Laha, L. R. 19 I. A. 203, 215, 216*, followed. *Cairncross* v. *Lorimer 3 Macq. 829*, and *Carr* v. *London and North-Western, Railway Company, L. R. 10 C. P. 307, 317*, referred to. *Per* SUNDARA AYYAR, J.—No actual or verbal representation is necessary to give rise to estoppel. It is no contravention of the rule enacted in section 317, Civil Procedure Code (Act XIV of 1882), to hold that *A* is estopped in such as case as even a title acquired by a statute may be waived just like a title under a private conveyance. It is fraudulent within the meaning of section 317, Civil Procedure Code, on *A*'s part to have obtained a sale certificate in his name after his attestation. *Abdul Aziz* v. *Kanthu Mullick, I. L. R. 38 Calc. 512, Krishnaswami Chetty* v. *Vellaichami Thevan, 21 Mad. L. J. 1077, Madras Hindu Mutual Benefit Permanent Fund* v. *Ragava Chetti, I. L. R. 19 Mad. 200, Bishan Dial* v. *Ghazi-ud-din, I. L. R. 23 All. 175, and Monappa* v. *Surappa, I. L. R. 11 Mad. 234*, distinguished. *Per* SADASIVA AYYAR, J.—*Obiter* : Section 317, Civil Procedure Code, will be a bar only if the plaintiff is obliged to set up as part of his case for relief the plea that *A* purchased in Court auction as *benamidar* for *B*. After the transfer of Property Act no waiver or transfer of rights can be recognised in the case of immoveable property in the absence of a registered instrument. Having regard to the ordinary course of conduct of Indians in this presidency, attestation by a person who has or claims any interest in the property covered by the document must be treated *primâ facie* as a representation by him that the title and other facts relating to title recited in the document are true and will not be disputed by him in favour of the oblige under the document. KANDASAMI *v.* NAGALINGA, (1913)
I. L. R. 36 Mad. 564

ESTOPPEL BY CONDUCT.

See MORTGAGE . **I. L. R. 40 Calc. 378**

ETIQUETTE AFFECTING COUNSEL.

See BAR COUNCIL, RESOLUTION OF.
I. L. R. 40 Calc. 898

EVIDENCE.

See BAILMENT . **I. L. R. 37 Bom. 122**

See CIVIL PROCEDURE CODE (ACT XIV OF 1882). . **I. L. R. 36 Mad. 477**

See EVIDENCE ACT (I OF 1872).

See EVIDENCE ACT (I OF 1872), SS. 69 AND 70 . . **I. L. R. 35 All. 364**

See JURY, TRIAL BY
I. L. R. 40 Calc. 367

See MORTGAGE . **I. L. R. 35 All. 353**

See PRACTICE **I. L. R. 40 Calc. 119**

EVIDENCE—*contd*

See Pre emption I L R 35 All 472

See Privy Council
I L R 36 Mad 501

1 ——————— *Evidence Act (I of 1872) s 122— Representative in interest — Disclosure by wife of communications made by ... husband during marriage* Where there

to his wife during marriage, the wife ... be permitted, even if willing to disclose such communications The widow of a deceased husband is not his representative in interest for the purpose of giving such consent Nawab Howladar v Emperor, (1913)
I L R 40 Calc 891

2 ——————— *Admissibility of*

of the *property of the deceased by* ... in the Revenue Court asking

the share which had gone to her husband's brother *Held*, that it must be presumed from the application in the mutation proceedings the recording of names by the Revenue Court in accordance with that application and the subsequent sales on the strength of that record that the parties entered into a family arrangement and the application presented to the Revenue Court was therefore not compulsorily registrable and was admissible in evidence Kokla v Piari Lal (1913)
I L R 35 All 502

3 ——————— *Expert in handwriting, value to be attached to evidence of— Corroboration of such evidence* An accused should not ... the
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writing ...
(1913) I L R 36 Mad 100

4 ——————— *Private knowledge of facts by Judge, how far may be relied on by him—Sivaram lands—Meaning of Sivaram— Madras Estates Land Act (I of 1908), s 185, construction of* Where the Judge used knowledge gained by him from his own experience as to scarcity of land for cultivation (although his knowledge was partly derived from facts relating generally to the lands in the zamindari of Nuzvid in which the lands in suit were situated) *Held*, that the fact of which he had such knowledge was merely a fact of economical history and that he had not acted illegally in relying upon it *Per* Sundara Ayyar J—A Judge is not entitled to rely on specific facts not proved by the evidence

EVIDENCE—*contd*

in the case but known to him personally or other

of the specific facts in dispute in the case *Per* Sadasiva Ayyar J—I think the only practical rule which can be laid down in these cases is that *if a Judge knows of his own knowledge* as an individual observer of a past relevant concrete private incident, and that fact cannot be subjected to ocular proof at the time of trial (*such as a person's colour resemblance of features, appearance, behaviour, chemical experiments on* the present condition of the object), and if the truth of such incidents is contested between the parties he should mention his private knowledge ... incidents to the parties and he should

as Judge In the present case the learned Judge has *not gone further than to use the general* knowledge which he has acquired as a past revenue

the facts after the consideration of the evidence ... in this case *Per* Curiam The word *sivaram* ... to lands does not necessarily convey the

Mahomedan Government *Per* Curiam ...
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Per Sadasiva Ayyar J—Evidence as to leases granted after 1st July 1898, is shut out by section 185 if the leases are sought to be used for the purpose of proving the character of the tenure of the land Lakshmayya v Varadaraja Apparow (1913)
I L R 36 Mad 168

6 Calc 268 Naval Kunwar v ... *10 All L J 390*, and *Abdul Majid* v *Mahbub Ali, F A No 129 of 1911*, followed *Manohar Singh*

EVIDENCE—*concld.*

v. *Sumirta Kuar, I. L. R. 17 All. 428*, not followed. *Bisheshwar Dayal* v. *Harbans Sahoy, 6 C. L. J. 659, Ghurphekni* v. *Permeshwar Dayal, 5 C. L. J. 653*, and *Rahim Jan Bibi* v. *Iman Jan, 14 C. L. J. 173*, doubted. BIHARI LAL *v.* MAKHDUM BAKSH (1913) . . . . I. L. R. 35 All. 194

EVIDENCE ACT (I OF 1872).

———— **ss. 3, 114, ill. (g), 125.**

See LIMITATION **I. L. R. 40 Calc. 898**

———— **ss. 21 and 81**—*Evidence of publications of a newspaper by a particular person, merely by production of the paper—Sufficiency of Criminal Procedure Code (Act V of 1898), ss. 255, 256, 271, 272, 428—"Necessary" meaning of —Mistake of Court, as to primâ facie case—Retrial.* Per SUNDARA AYYAR and PHILLIPS. JJ.—Merely, exhibiting a copy of a private newspaper containing a libellous statement without any sort of proof such as the production of an authenticated copy of a declaration under section 7 of Act XXV of 1867, is no proof of publication of the libel by the person by whom the paper purports to have been published. Evidence that a certain copy of the paper "*appears* to be printed and published by *A*" is no proof of publication, by him. If there be proof of publication of a newspaper of by *A* then section 81, Evidence Act, presumes that what purpose to be a newspaper of a particular name is that paper and that every copy of its was issued by the publisher of that paper. *Gathercole* v. *Miall, 15 M. & W. 319, Rex* v. *Forsyth, Russ. & R. 274*, and *Watts* v. *Fraser, 7 Ad. & E. 223*, considered. A statement in a complaint that the accused published the libel is no evidence against the accused as it was not made in the presence of the accused. The fact that the accused never denied publication by him of the libel does not relieve the prosecution of the necessity of proving affirmatively that the accused published the libel, an essential fact necessary to establish the guilt of the accused. Additional evidence under section 428, Criminal Procedure Code, can be ordered to be taken only if the Appellate Court thinks it necessary. *Quære*: Whether, if the admission by the accused of publication is contained in his written statement, that would relieve the prosecution from the defect in letting in evidence of publication. Difference between admissions in civil and criminal cases pointed out. *Quære*: Whether section 81 of the Evidence Act is not confined to public documents alone. *Per* SUNIDARA AYYAR, J. —Where the prosecution by its own negligence failed to produce evidence which it was its duty to do, additional evidence cannot be considered "*necessary*" by the Appellate Court within the meaning of s. 428. The language of that section seems to indicate cases where, there being already evidence on the record, the Court considered it to be unsatisfactory or where the evidence on record leaves the Court in such a state of doubt that it considers it necessary to enable it to decide the case to have further evidence. In such a case the accused should be ordered to be acquitted and

EVIDENCE ACT (I OF 1872)—*contd.*

———— s. 21—*concld.*

not retried allowing further evidence to be taken. *Per* PHILLIPS, *J.*—Where on the Court itself taking a mistaken view that a *primâ facie* case of publication by the defendant had been made out (as was evident from its framing a charge), evidence to that effect was not let in by the complainant; it is a case where the Appellate Court ought to consider that additional evidence is *necessary* within the meaning of s. 428, Criminal Procedure Code, and a retrial would be the proper order to be made under the circumstances, if taking additional evidence would not meet the requirements of the case. "Necessity" under s. 428, Criminal Procedure Code, is a matter to be determined on the particular facts of each case. *Per* BENSON, J.—Where the prosecution wanted to let in evidence necessary to prove the offence, but the Magistrate intervened, stating that it was unnecessary in the circumtances of the case and so refused to take that evidence, the case is one in which retrial may properly be ordered or in which the Court may properly call for the additional evidence under s. 428, Criminal Procedure Code. JEREMIAH *v.* VAS (1813)

I. L. R. 36 Mad. 457

———— **s. 32, sub. ss. (3), 5)**—

See HINDU LAW—ADOPTION.

I. L. R. 36 Mad. 19

———— **s. 33**—'*Opportunity to cross-examine' meaning of—Whether an accused in a Sessions enquiry had the opportunity to cross-examine a prosecution witness.* In an enquiry after Chapter XVIII of the Criminal Procedure Code (Act V of 1898), a witness was examined by the prosecution but he was not cross-examined by the accused; in the Sessions trial, the witness having died, his deposition was put in under section 33 of the Indian evidence Act: *Held*, that it is doubtful whether the evidence is admissible under sec. 33 of the Indian Evidence Act; even if it is admissible, its evidentiary value is very small indeed. Having regard to the practice at Sessions enquiries not to cross-examine the prosecution witnesses unless, at the conclusion of the enquiry when the charge is drawn up, the accused thinks it worth while to defend himself in the first Court, it could hardly be said that the accused had the opportunity to cross-examine a witness examined by the prosecution, where the accused did not cross-examine any of the prosecution, witnesses, and was not asked by the enquiring Magistrate to exercise this right of cross-examination. IBRAHIM *v.* THE KING-EMPEROR, (1912)

17 C. W. N. 230

———— **s. 35**—*Estates Partition Act (VIII of 1876)—V of 1897—Batwara khasra prepared under the Act of 1876, if a record within the meaning of section 35.* A *khasra* prepared under Act *VIII* of 1876 in *batwara* proceedings, which were completed so far as the particular *khasra* was concerned, before Act *V* of 1897 was passed, is not record within the meaning of s. 35 of the Evidence

EVIDENCE ACT (I OF 1872)—*contd.*

——— s. 35—*concld*

Act and cannot be relied on for the purpose of rebutting the presumption raised by an entry in the record of rights. *Perma Ray* v. *Kishen Ray, I. L R 25 Calc 90*, followed *Janki Dobey* v. *Kirtarath Roy, 13 C W. N. 93*, distinguished NANDA LAL PATHUK *v.* MOHUNT CHANURPAT DAS (1913) . . . **17 C. W N. 779**

——— s. 44—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 11 . **I. L R. 37 Bom. 563**

——— s. 57—

See CHURCH . **I. L R. 36 Mad. 418**

——— s. 68—*Mortgage—Evidence of execution—Attesting witness—Scribe* The scribe of a mortgage deed cannot be counted as an attesting witness merely because he has signed the deed, even though the deed may in fact have been executed in his presence. To be an "attesting witness" within the meaning of section 68 of the Indian Evidence Act, 1872, the witness must have seen the document executed and have signed it as a witness *Ranu* v. *Laxmanrao, I. L R. 33 Bom. 44*, *Burdett* v *Spilsbury, & 10 C & F 340*, and *Shamu Patter* v. *Abdul Kadir Ravuthan, I L R 35 Mad 607*, followed *Radha Kishen* v *Futeh Ali Khan, I. L R 20 All 532*, *Raj Narain Ghosh* v. *Abdur Rahim, 5 C. W. N 554*, and *Muhammad Ali*, v. *Jafar Khan, All Weekly Notes, (1897) 146*, discussed. BADRI PRASAD *v* ABDUL KARIM, (1913) **I L R. 35 All. 254**

——— ss. 69, 70.—*Evidence—Mortgage—Proof of execution of mortgage—Mortgagors illiterate, and both they and the attesting witnesses dead before suit brought.* A mortgage deed was on the face of it executed in 1889, by three illiterate mortgagors, who affixed their marks, and was attested by more than two witnesses. At the time of the institution of a suit for sale thereon, all the executants and the attesting witnesses were dead, and the evidence tendered in proof of the mortgage consisted of (i) the statement of a witness who professed to be acquainted with the handwriting of two of the attesting witnesses, (ii) a deed of usufractuary mortgage executed by one of executants of the mortgage in suit, and by the representative of the two other executants, which referred to and recognized the genuineness of the mortgage in suit; and (iii) a deed of sale executed in 1902 by the representatives or some of the re-

the mortgage in suit GOBARDHAN DAS *v* HORI LAL, (1913). . . . **I. L. R. 35 All 364**

——— s. 90—*Secondary evidence of document which may be given—Document, failure of witness to produce—Process fee for warrant, failure to deposit, if default excluding secondary evidence of document—*

EVIDENCE ACT (I OF 1872)—*contd.*

——— s. 90—*concld.*

Recital of boundaries in documents, if admissible as between persons not parties thereto—Document over thirty years old, opportunity if must be given to prove execution where presumption does not apply—Road cess return, admissibility of—Omission in a document, if evidence Where the plaintiff issued summons upon a witness to produce a lease which was a title deed of the witness and which he was

warrant issued did not amount to default on his

Singh v. *Sumitra Koer, I L R 17 All 428*, referred, to Under section 90 of the evidence Act the Court is not bound to presume the genuineness of a document over thirty years old It must first satisfy itself that the elements necessary to bring the document within the rule in that section exists and then exercise its discretion as to whether, in the circumstances the presumption of genuineness should be applied to it If the Court is not satisfied that the presumption should apply, it should call upon the party to produce evidence of its execution Where, therefore, the Court below rejected such a document without calling upon the party to produce evidence of execution. *Held*, that the Court had not acted properly The absence of the names of the predecessors of the plaintiff from the list of tenants in a road cess return not filed by either party to the suit, was admissible in evidence against the plaintiff IMRIT CHAMAR *v.* SIBDHARI PANDAY, (1911) **17 C W. N. 108**

——— s. 91—*Evidence, admissibility of—Confession made to enquiring magistrate but not recorded by him in writing—Criminal Procedure Code, ss 364 and 533.* A confession of an accused person made to a Magistrate holding an inquiry is a matter required by law to be reduced to the form of a document within the meaning of s 91 of the Indian Evidence Act, 1872, and that no evidence can be given of the terms of such a confession except the record, if any, Procedure section 364 of the Code of Criminal Procedure Section 533 of the Criminal Procedure Code has no application to a case where no record whatever has been made of such a confession. EMPEROR *v.* GULABU (1913) **I. L. R. 35 All. 260**

——— s. 92—

See DOCTRINE OF SATISFACTION. **I. L. R. 37 Bom. 211**

EVIDENCE ACT (I OF 1872)—*contd.*

———— s. 92—*concld.*

———— s. 92— *Sale of land, consideration for, not as stated in the deed—Oral promise, failure to perform.* Assuming that it may be shown by oral evidence that the real consideration for a deed of sale was not the consideration stated in the deed itself but a promise to maintain the plaintiff, in the absence of coercion, undue influence, fraud or misrepresentation of any kind at the time when the deed of sale was registered and possession taken thereunder, the deed will not be set aside. The special equitable doctrine whereby the American Courts have relieved in cases where an aged person has conveyed all his property in consideration of an oral promise to be supported for the remainder of his life by the grantee, not applied. SUBBAYYAR *v.* MONIEM SUBRAMANIA AYYAR. (1913).
I. L. R. 36 Mad. 8

———— s. 92, prov. 1—*Evidence—Proof of failure of consideration—Promissory note given partly on account of a gambling debt.* The defendant who had been gambling with the plaintiffs and had lost, gave the plaintiffs two promissory notes, partly for his gambling losses and partly on other accounts, but it could not be ascertained what proportion of the total sum secured was represented by the gambling debts. *Held,* on suit to recover on these notes, that it was open to the defendants to prove that the consideration was in part at least money lost in gambling; and that the Court below was justified, on its finding that the part of the consideration represented by gambling debts could not be separated from the rest, in dismissing the whole suit. *Juggarnauth Sew Bux* v. *Ram Dyal, I. L. R. 9 Calc. 791,* distinguished. BALGOBIND *v.* BHAGGU MAL (1913).
I. L. R. 35 All. 558

———— s. 106—

See MORTGAGE I. L. R. 40 Calc. 342

———— s. 114—*Presumption—Mortgage, suit on—bond produced by defendant bearing endorsement of payment signed by mortgagee and her agent—Onus on plaintiff—Case set up by plaintiff found false—Suit if may be decreed upon suspicion that bond was dishonestly got at by defendant.* Where the plaintiff as the legal representative of the original mortgagee sued to enforce a mortgage but was unable to produce the original bond which was produced by the defendant bearing on it an endorsement of payment by the mortgagee and her general agent: *Held,* that, in view of the presumption under s. 114 of the Evidence Act which embodies the ordinary rule of law, the onus lay on the plaintiff of proving affirmatively that the debt was still outstanding, or in other words, that the defendant got possession of the bond by dishonest means and that the signatures to the endorsement were either forgeries or unauthorised. *Quære*:—Whether any question of *onus* remains after the parties have gone into evidence. Plaintiff put forward the case that the bond was dishonestly and fraudulently made over to the defendant by

EVIDENCE ACT (I OF 1872)—*concld.*

———— s. 114—*concld.*

the mortgagee's general agent and that at the time alleged the mortgagee was not present at the place at which the endorsement was alleged to have been signed. Both the Courts in India disbelieved this case. The trial Court upon this finding dismissed the suit, but the Appellate Court held that the *onus* was wrongly thrown on the plaintiff, that the bond must have been purloined by some person during the confusion that followed the mortgagee's death, and from this it was concluded that the defendant must have got the bond by some dishonest means: *Held,* that the presumption under s. 114 of the Evidence Act, could not be set aside by possibility based on surmises. That suspicion, though a ground for scrutiny, cannot be made the foundation of a decision. HASAN KHAN *v.* MANDIR DAS (1912).
17 C. W. N. 49

———— s. 115—

See ADVERSE POSSESSION.
I. L. R. 40 Calc. 173

See ESTOPPEL . I. L. R. 36 Mad. 564

———— ss. 115, 116—

See WAKF . I. L. R. 37 Bom. 447

———— s. 116—

See LANDLORD AND TENANT.
I. L. R. 36 Mad. 53

———— s. 117—

See TRADE-MARK I. L. R. 40 Calc. 814

———— s. 122—

See EVIDENCE I. L. R. 40 Calc. 891

EVIDENCE FOR THE DEFENCE.

See PRACTICE . I. L. R. 40 Calc. 376

EVIDENCE OF JURORS.

See JURY, TRIAL BY
I. L. R. 40 Calc. 693

EVIDENTIARY VALUE.

See CONFESSION I. L. R. 40 Calc. 873

EXCISABLE ARTICLE.

See UNITED PROVINCES EXCISE ACT (IV OF 1910), s. 60.
I. L. R. 35 All. 575

EXCISE ACT (E. B. and ASSAM I OF 1910).

———— ss. 36, 53, 72—*Medicated article containing Bhang "Kameshwar Modak" Manufacture and sale by medical practitioner for medicinal purposes if protected—S. 72, effect and scope of—Notification by Local Government—Rules by Board of Revenue.* The petitioner, who was a Kabiraj, was charged under s. 53 of the Eastern Bengal and Assam Excise Act with the manufacture and sale of an exciseable article, namely, a mixture called "Kameshwar Modak" which contained *bhang* and

EXCISE ACT (E B AND ASSAM I OF 1910)—*concld*

——— s 36—*concld*

pared by
d that
... of the
article in question the petitioner was protected by s 72 of the Act the language of which is wide enough to take any case to which it applies without restriction *out of the Act* SATISH CHANDRA ROY *v* THE KING EMPEROR (1913)
17 C W N 639

EXECUTION

See CIVIL PROCEDURE CODE (ACT V OF 1908) SCH III s 7 (*1*) (*b*) ss 69 0
I L R 37 Bom 32

See EXECUTION OF DECREE

See LIMITATION ACT (XV OF 1877) ARTS 178, 179
I L R 36 Mad. 553

EXECUTION APPLICATION

——— by one only of the decree holders—

See CIVIL PROCEDURE CODE (ACT XIV OF 1882) s 231
I L R 36 Mad 357

EXECUTION OF DECREE

See CIVIL PROCEDURE CODE, 1882 s. 287 (*c*) I L R. 35 All 257

See CIVIL PROCEDURE CODE 1882 s 315 I L R 35 All. 419

See CIVIL PROCEDURE CODE 1908 s 47 I L R 35 All 243

See CIVIL PROCEDURE CODE 1908 s 60
I L R 37 Bom 415

See CIVIL PROCEDURE CODE 1908 s 60 (c) I L R 35 All 307

See CIVIL PROCEDURE CODE 1908 s 86 I L R 35 All. 138

See CIVIL PROCEDURE CODE 1908 s 68 O XXI R 100
I L R Bom 488

See CIVIL PROCEDURE CODE 1908 O XXI R 16
I L R 35 All. 204

See CIVIL PROCEDURE CODE 1908 O XXI RR 84 89 92
I L R 35 All. 65

See CIVIL PROCEDURE CODE 1908 O XXI R 88 I L R 35 All. 296

See CIVIL PROCEDURE CODE 1908 O XXI R. 89
I L R 37 Bom 367

See CIVIL PROCEDURE CODE 1908 O XXXIV, R. 4
I. L R 35 All. 518

EXECUTION OF DECREE—*contd*

See CIVIL PROCEDURE CODE 1908, O XXXIV R 8
I L R 35 All 116

See HIGH COURT BOMBAY, CIVIL CIRCULAR 96 CL (*l*) I L R 37 Bom 631

See HINDU LAW—JOINT FAMILY
I. L R 35 All. 380

See LIMITATION ACT (XV OF 1877) SCH II ART 179
I L R 37 Bom 42 317

See LIMITATION ACT (IX OF 1908) SCH I ART 128 I L R 35 All 389

See LIMITATION ACT (IX OF 1908) SCH I ARTS 138 AND 144
I L R. 35 All 482

See LIMITATION ACT (IX OF 1908) SCH I ART 182 CL. (*5*)
I L R 37 Bom 559

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 52 I. L R 37 Bom 621

1. ——— *Notice of execution—Sale—Civil Procedure Code (Act V of 1908) s 47 O XXI rr 22 and 90—Omission to serve notice effect of—Whether subsequent sale void—Question relating to execution of decree—Second appeal* Omission to serve a notice under the provisions of O XXI r 22 of the Civil Procedure Code is not by itself sufficient to render a sale which has been subsequently held void *Sahdeo Pandey* v *Ghasiram Gyawal I L R 21 Calc 19* not followed. Though an application to set aside a sale on the ground that no notice had been served as required by O XXI r 22 of the Civil Procedure Code is one which cannot be made under the provisions of O XXI r 90 of the Code but must be one made under the provisions of s 47 of the Code still in order to justify a Court in setting aside a sale on the ground of the omission to serve a notice under O XXI r 22 it must be proved that the omission to serve such notice has resulted in substantial injury to the owner of the property sold *Lakshmi Charan Sen* v *Sris Chandra Roy 13 C L J 162* referred to A second appeal lies from an order passed on appeal on an application to set aside a sale on the ground that no notice had been served as required by O XXI r 22 of the Code KUMED BEWA *v* PRASANNA KUMAR ROY (1912)
I L R 40 Calc 45

2 ——— *Rent decree—Sale—Encumbrances by way of maintenance grant—Portion of tenure in charge of the Encumbered Estates Act—Authorities exempted from sale by Commissioner—Effect of the order of exemption—Chota Nagpur Landlord and Tenant Procedure Act (Beng I of 1879) s 123—Chota Nagpur Tenancy Act (Beng VI of 1908) s 208—General Clauses Act (Beng I of 1899) s 8 cl (e)—Rent Recovery Act (Beng VIII of 1865) ss 4 5 and 16* When an application in execution of a rent decree was made for the sale of all the villages comprised in a

EXECUTION OF DECREE—*contd.*

tenure, but the Commissioner, for reasons sufficient in his opinion, directed the exemption of some of the villages from the sale: *Held*, that, the decree holder was not deprived of his right to execute his decree, which must be executed as a decree for rent against the unexempted portion of the tenure under the Bengal Rent Recovery Act of 1865. The effect of a sale of the unexempted portion would be to pass the property to the purchaser free of all encumbrances. *Dwarkanath Chuckerbutty* v. *Dhun Monee Chowdhrain, 15 W. R. 524, Sham Chand Mitter* v. *Juggut Chandra Sircar, 22 W. R. 541,* referred to. MADANMOHAN NATH SAHI DEO *v.* PROTAP UDAI NATH SAHI DEO (1912) . . . **I. L. R. 40 Calc. 623**

3. ———————— *Mortgage-decree passed before the Code of 1908—Application for execution made after the Code of 1908 came into force, if governed by the new Code—Civil Procedure Code (Act V of 1908), ss. 1 (2), 48, 154—General Clauses Act (X of 1897), s. 6.* S. 48 of the new Code of Civil Procedure (Act V of 1908) governs an application for the execution of a mortgage-decree obtained even before that Code came into force. S. 154 of the new Code clearly contemplates a retrospective effect of the Code of an interference and with rights acquired under the old Code. S. 1, cl. (2) of the new Code afforded ample opportunity to all persons having rights under the old Code to enforce them before the new Code came into operation. *Kaunsilla* v. *Ishri Singh, I.L.R. 32 All. 499,* not followed. BISSESWAR SONAMUT *v.* JASODA LALL CHOWDHRY *(1913)*

I. L. R. 40 Calc. 704

4. ———————— *Stay of execution of decree under appeal—Jurisdiction—Procedure.* The Court which passed a decree has no power to stay execution thereof whilst the decree is under appeal; neither has a Court which has executed its own decree awarding possession of immoveable property, power to restore to possession the party whom it has ejected. SATYA SHANKAR GHOSHAL *v.* MAHARAJ NARAIN SHEOPURI (1912)

I. L. R. 35 All. 119

5. ———————— *Limitation—Suit for sale on a mortgage—Decree payable by instalments—Civil Procedure Code, 1882, s. 258—Civil Procedure Code (1908), O. XXI, r. 2; O. XXXIV, r. 5—Limitation Act (IX of 1908), Sch. I, Art. 181.* On a compromise in a suit for sale on a mortgage, a decree followed providing that the sum found due on the mortgage (Rs. 1,374), with interest at a certain rate, should be paid by instalments of Rs. 100 a year, along with the interest then due. Payments were to be made by the end of Jeth in each year, beginning with the Jeth 1957 Fasli (June 1900), and it was provided that, if default were made for three years in succession in the payments and interest, the decree-holder would be at liberty to recover at once the whole amount payable under the decree, that is, to apply for an order absolute for sale and execute the same. No payment was made in 1900 or 1901, but in June 1902, just before the end of Jeth 1959 Fasli, the judgment-debter paid up all that was due on account of the first three years. He made no payment in 1903, but in June, 1909, he paid up all that was due up to the end of Jeth 1960 Fasli (June, 1903). No payment was made in 1905, but in June, 1906, he paid the instalment and interest which he ought to have paid in Jeth 1961 Fasli (June, 1904). This payment was covered by the proviso to section 20 (*1*) of the Limitation Act. The only other payment made was a small sum on account of interest in July, 1909. The decree-holder applied for an order absolute for sale on the 3rd of August, 1909. *Held*, that the first three consecutive defaults were in 1905, 1906 and 1907, and that the decree-holders' application was in time applying Art. 181 of the first Schedule to the Indian Limitation Act, 1908. The following cases were referred to:—*Oudh Behari Lal* v. *Nageshar Lal, I. L. R. 13 All. 278, Kishan Singh* v. *Aman Singh, I. L. R. 17 All. 42, Roshan Singh* v. *Mata Din, I. L. R. 23 All. 36, Chunni Lal,* v. *Harnam Das, I. L. R. 20 All. 302, Shankar Prasad* v. *Jalpa Prasad, I. L. R. 16 All. 371, Ajudhia* v. *Kunjal, I. L. R. 30 All. 123, Mon Mohan Roy* v. *Durga Churn Gooee, I. L. R. 15 Calc. 502,* and *Kashiram* v. *Pandu, I. L. R. 27 Bom. 1.* BADRI NARAIN *v.* KUNJ BIHARI LAL (1913).

I. L. R. 35 All. 178

EXECUTION PROCEEDINGS.

See MESNE PROFITS **I. L. R. 40 Calc. 56**

EXECUTOR.

See EXECUTOR, SALE BY.

I. L. R. 36 Mad. 575

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 95 . . . **I. L. R. 37 Bom. 158**

EXECUTOR, SALE BY.

———————— *Powers of an executor, happening to be guardian, effect of—Limitation Act (XV of 1877), Arts: 44 and 91—What must be proved before setting aside a sale by an executor—Onus—Executor under Probate and Administration Act (V of 1881)—Sale without Probate or Letters of Administration, validity of.* In the absence of proof that a sale by an executor was not a proper act of administration and was not required for the purpose of discharging debts of the deceased, and that the vendee was a *mala fide* purchaser having knowledge that the sale was not in due course of administration, the onus of proving all which lies on the party attacking the sale, the sale is valid and binding on all. The validity of a sale by one clothed with the powers of an executor must be tested with reference to the powers and duties of an executor; and it cannot be regarded or attacked as a sale by a guardian even i the executor actually happen to occupy the position of a guardian with reference to the plaintiff, a legatee under the will. Hence Article 44 of the Limitation Act (Act XV of 1877) is inapplicable to such a sale Nor is Article 91 applicable to the case as it cannot be said that the plaintiff, a legatee could not

EXECUTOR, SALE BY—*concld.*

succeed in recovering the property without setting ... which was made neither by

powers of an executor An executor's title ... derived from the will and an executor under the proba... and Administration Act (V of 1881) unlik... Act o... with... or Letters ... *Sheik Essa I L R 8 Bom 241,* and *Mathuradas Lowji* v *Goculdas Madhowji I L R 10 Bom 468,* followed *Sarat Chandra Banerjee* v *Bhupendra nath Basu, I L R 25 Calc 103* considered and explained Sections 2 4 and 45 and the preamble and heading of Chapter II of Act V of 1881 considered GANAPATHI AIYAR *v* SIVAMALAI GOUNDAN (1913) I. L. R. 36 Mad 575

EXORBITANT INTEREST

See CONTRACT ACT, s 74
I. L. R. 36 Mad 229

EX PARTE DECREE

See CIVIL PROCEDURE CODE 1908, O V, RR 1 AND 2 O IX, R 13
I. L. R 35 All. 163

EXPERT IN HANDWRITING

See EVIDENCE I L R 36 Mad. 159

EXPROPRIETARY TENANT.

See AGRA TENANCY ACT (II OF 1901), ss 28, 29, 30 and 34
I. L R 35 All 123

———— *Sale by one of several co-owners holding sir land of his undivided zamindari share—Vendor exproprietary tenant of all the co owners and not merely of his vendee* Where the owner of an undivided share in a *patti* sells his zamindari rights and becomes an exproprietary tenant of the sir land held by him he becomes the tenant as regards such land, not merely of his vendees but of all the co sharers in the *patti* DEBI PRASAD *v* BHAGWAN DIN (1912)
I L R. 35 All. 27

F

FACTUM VALET.

See HINDU LAW—MARRIAGE
I L. R. 35 All. 265

FALSE CHARGE

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 250
I L R. 37 Bom 376

FALSE CHARGE TO POLICE.

See JURISDICTION OF CRIMINAL COURT
I L. R. 40 Calc 360

FALSIFICATION OF ACCOUNTS

See CHARGE . I. L R 40 Calc. 318

FAMILY PURPOSE

See MORTGAGE I L R 40 Calc 342

FAMILY SETTLEMENT

See EVIDENCE I. L R 35 All. 502

FEMALE MEMBERS

See MORTGAGE I. L R 40 Calc 378

FERRY

See GENERAL CLAUSES ACT (X OF 1897) s 3(25) I L. R. 35 All 156

FINAL DISCHARGE

See PROVINCIAL INSOLVENCY ACT (III OF 1907) I L R. 36 Mad 402

FIRE INSURANCE.

See INSURANCE I. L. R. 37 Bom. 183

FIRM.

See FOREIGN JUDGMENT
I L R. 36 Mad. 414

FISH.

———— capture of, in irrigation tank—

See THEFT I L R 36 Mad. 472

FISHERY—

———— *Small rivers tidal but not nav*... rights o... not na... whose... necessa... not be... *v* BHAG...

FORECLOSURE.

———— suit for—

See LIMITATION ACT (IX OF 1908) *s* 20,
I L R. 35 All. 378

FOREIGN DECREE

See FOREIGN JUDGMENT
I. L. R. 36 Mad. 414

FOREIGN DOMICILE

See DIVORCE I L. R. 40 Calc. 215

FOREIGN JUDGMENT

———— *Suit on—Foreign Courts*

no personal decree can be passed against ...

FOREIGN JUDGMENT—*concld.*

although the parties on record *eo nomine* may be made personally liable. The extent of the rule applicable to a case of defendants sued as partners is laid down in O. XXI, rule 50, Civil Procedure Code. A firm was sued in Singapore in the firm's name but only one of the partners was served and a decree was passed against "defendants" for a certain sum. On the judgment of the Singapore Court a suit was filed in British India against the individual partners of the firm and the representatives of a deceased partner. *Held,* that the partners who were not served in the Singapore suit were not personally liable and that no personal decree can be passed against them in the present suit, but that their partnership property, if any, is liable for the decree of the Singapore Court. *Per* CURIAM: The same is the principle applied in suits against an Hindu family represented by its manager and in cases covered by Order I, rule 8, Civil Procedure Code, the result being that an injunction in a decree in the latter class of cases is not binding on those who are not actually parties to the record. *Sadagopachari* v. *Krishnamachari, I. L. R. 12 Mad. 356,* and *Srinivasa Aiyangar v. Arayar Srinivasa Aiyangar, I.L.R. 33 Mad. 483,* referred to. SAHIB THAMBI *v.* HAMID (1913) . . . . **I. L. R. 36 Mad. 414**

FORFEITURE.

See LANDLORD AND TENANT.
I. L. R. 40 Calc. 870

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 111.
I. L. R. 35 All. 145

——— of land—

See LAND REVENUE CODE (BOM. ACT V OF 1879, AS AMENDED BY BOM. ACT VI OF 1901), s. 56.
I. L. R. 37 Bom. 692

FORGERY.

See PENAL CODE (ACT XLV OF 1860), ss. 463, 467 . **I. L. R. 37 Bom. 666**

FRAUD.

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 95.
I. L. R. 37 Bom. 158

——— *Fraud and collusion of predecessors in title—Parties by descent precluded from setting up fraud.* The property in dispute belonged originally to Mahomedsahib, who in 1829 gave it to his wife Sabinibibi as dower. Sabinibibi sold it in 1863 to Sardarkhan, one of the two brothers of her daughter-in-law Fatmabibi. Sardarkhan died in 1873, and in 1875 his brother Mahomedkhan gave it in gift to Shabusaheb, one of the sons of Fatmabibi. Subsequently on Shabusaheb's death, his creditor sued his son and obtained a decree against him. In execution the property was sold and was purchased at auction by one Ramchandra who having transferred his right to the plaintiff, her agent brought the present suit against Shabusaheb's sister and his two brothers

FRAUD—*concld.*

to recover possession. *Held,* that the plaintiff was entitled to succeed. If all the said transactions were genuine, legal and valid, the defendants had no case at all, and if they were, as alleged by the defendants, fraudulent and collusive, the defendants were precluded, as parties by descent to the alleged fraud, from setting up their own iniquity to avoid the legal consequences of those transactions. *Doe, dem. Roberts* v. *Roberts,* 2 B. & A. 367, followed. SAYAD NAHANNU *v.* SABINBIBI (1911) . . . **I. L. R. 37 Bom. 217**

FRESH PROCEEDINGS.

See JURISDICTION OF CRIMINAL COURT.
I. L. R. 40 Calc. 71

G

GAMBLING.

See PREVENTION OF GAMBLING ACT (BOM. IV OF 1887), s. 4, CLS. (*a*), (*c*)
I. L. R. 37 Bom. 651

See PUBLIC GAMBLING ACT (III OF 1867) ss. 3 AND 4 . **I. L. R. 35 All. 1**

——— *Bombay Prevention of Gambling Act (IV of 1887), ss. 5, 6 and 7—Gaming in a common gaming-house—Search of the house without warrant issued under s. 6.—Presumption under s. 7 cannot arise in search conducted without warrant under s. 6.* The Deputy Commissioner of Police in Bombay, who was invested by the Commissioner of Police with power to issue warrants under s. 6 of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887), on receipt of certain information on oath, personally raided a house and searched it, without issuing a warrant under the provisions of s. 6. The accused seventeen in number were not seen gaming, but there were found three packs of playing-cards and small coin lying near them. The accused were tried for the offence of gaming in a common gaming-house; and the trying Magistrate applying to them the presumption raised by s. 7 of the Act, convicted them of an offence under s. 6. The accused applied to the High Court:—*Held,* that the presumption under s. 7 that the mere finding of cards and dice was to be taken as evidence that the house in which they were found was used as a common gaming-house, could only arise when the house is entered under warrant issued under s. 6 of the Act. *Held,* accordingly, that the accused should be acquitted and discharged. *Emperor* v. *Fernad, I. L. R. 31 Bom. 438,* considered. EMPEROR *v.* JAFFUR MAHOMED (1912).
I. L. R. 37 Bom. 402

GAMBLING DEBT.

See EVIDENCE ACT (I OF 1872), s. 92
I. L. R. 35 All. 558

GANJAM AND VIZAGAPATAM AGENCY RULES.

——— *Agent's order under s XVIII—Maintainability of petition to High Court under Rule XX—Interference of High Court in proper cases—S 244, bar by—Who can set up* A petition lies to the High Court under rule XX of the Ganjam and Vizagapatam Agency Rules, even though the Agent acted under Rule XVIII in dismissing an appeal *Jagannadha* v *Gopanna, I L R 16 Mad 229,* dissented from An order of the Agent summarily dismissing an appeal is a decree as it disposes of the rights of the parties, and under Rule XX the High Court may in a proper case (as here, where the Agent gives no reasons for dismissal) direct the Agent to review his judgment A person who was not a party to a previous suit cannot set up the effect of an order in execution in that suit as a bar to a suit against him *Quære* Whether when s 244, Civil Procedure Code, does not apply to Agency Tracts the principle of that section applies. VIKRAMA DEO *v* RAGHUNATHA PATRO (1913)
I. L. R 36 Mad. 128

GENERAL CLAUSES ACT (X OF 1897).

——— s 3 (*25*)—

——— *Provincial Small Cause Courts Act (IX of 1887) Sch II, Art 13—Court of Small Causes—Jurisdiction—Ferry—"Immovable property" —Suit to recover tolls alleged to be due to plaintiff as lessee of a ferry Held,* that the right to a ferry is a benefit which arises out of land and comes within the definition of immovable property under s 3 (*25*) of the General Clauses Act, 1897, and a suit by a lessee of a ferry to levy a toll alleged to be recoverable by him as such lessee, falls under, Art 13 of the second Schedule to the Provincial Small Cause Courts Act and is therefore not cognizable by that Court *Gokal Chand* v *Lal Chand, Punj Rec 1897, Case No 48, p 215,* and *Desa Singh* v *Narain Das, Punj Rec., 1898, Case No 80, p 278* approved ABDUL HAMID KHAN *v* BABU LAL (1913)
I. L. R 35 All. 156

——— s 6—

See EXECUTION OF DECREE
I. L R 40 Calc. 704

See HUSBAND AND WIFE
I. L. R. 37 Bom. 393

GENERAL CLAUSES ACT (BENG. I OF 1899).

——— s. 8, cl. (e)—

See EXECUTION OF DECREE.
I L. R. 40 Calc. 623

GHATWALI TENURE.

See ADVERSE POSSESSION
I. L. R. 40 Calc 173

GIFT

See NAIKINS . I. L. R. 37 Bom. 116

See REGISTRATION I. L. R. 35 All. 3

GIFT—*concld.*

——— absolute, to son—

See HINDU LAW—WILL.
I. L. R 40 Calc. 274

GIFT-OVER

See WILL I. L R. 40 Calc. 192

GOVERNMENT.

See BHAGDARI VILLAGE
I. L R. 37 Bom. 87

See LAND ACQUISITION ACT (I OF 1894), ss 3 (*b*), 11, AND 31 (*1*) AND (*2*)
I. L R. 37 Bom 76

——— share of—

See LAND ACQUISITION—COMPENSATION.
I. L. R 40 Calc. 64

——— suit against—

See ABKARI ACT (BOM ACT V OF 1878), ss 32, 67 I L R 37 Bom. 101

GOVERNMENT CIRCULAR.

——— effect of—

See CRIMINAL REVISION
I. L R. 40 Calc. 41

GOVERNMENT OFFICER.

——— suit against—

See COURT OF WARDS ACT (BOM ACT I OF 1905), s 3 (*c*).
I. L. R. 37 Bom 313

GOVERNMENT OF INDIA ACT, 1858 (21 & 22 Vict, c 106)

——— ss. 65 to 67—

See JURISDICTION OF CIVIL COURT.
I L. R. 40 Calc. 391

GRANT.

See VRITTI . I. L R. 37 Bom. 409

——— Ekrarnama—*Lease or License—Construction—Practice* Where a grant involved a transfer of an interest in immoveable property, the grantees were in the position of tenants, if it did not, they were at least in the position of a licensees. Where in an on *ekrarnama* there were clauses by which the grantors reserved to themselves certain rights for limited purposes, but which, properly construed, gave the grantees exclusive possession of the property, the grant amounted to a lease To give exclusive possession there need not be express words, it is sufficient if the nature of the acts to be done by the grantee requires that he should have exclusive possession. *Roads* v *The Overseers of Trumpington, L. R. 6 Q B 56,* referred to Distinction between a license and a lease lies in the fact that in the case of license there is no transfer of interest in land, whereas in the case of a lease there is transfer of

FOREIGN JUDGMENT—*concld.*

although the parties on record *eo nomine* may be made personally liable. The extent of the rule applicable to a case of defendants sued as partners is laid down in O. XXI, rule 50, Civil Procedure Code. A firm was sued in Singapore in the firm's name but only one of the partners was served and a decree was passed against "defendants" for a certain sum. On the judgment of the Singapore Court a suit was filed in British India against the individual partners of the firm and the representatives of a deceased partner. *Held*, that the partners who were not served in the Singapore suit were not personally liable and that no personal decree can be passed against them in the present suit, but that their partnership property, if any, is liable for the decree of the Singapore Court. *Per* CURIAM: The same is the principle applied in suits against an Hindu family represented by its manager and in cases covered by Order I, rule 8, Civil Procedure Code, the result being that an injunction in a decree in the latter class of cases is not binding on those who are not actually parties to the record. *Sadagopachari* v. *Krishnamachari, I. L. R. 12 Mad. 356*, and *Srinivasa Aiyangar v. Arayar Srinivasa Aiyangar, I.L.R. 33 Mad. 483*, referred to. SAHIB THAMBI *v.* HAMID (1913) . . . . **I. L. R. 36 Mad. 414**

FORFEITURE.

See LANDLORD AND TENANT.
I. L. R. 40 Calc. 870

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 111.
I. L. R. 35 All. 145

——— of land—

See LAND REVENUE CODE (BOM. ACT V OF 1879, AS AMENDED BY BOM. ACT VI OF 1901), s. 56.
I. L. R. 37 Bom. 692

FORGERY.

See PENAL CODE (ACT XLV OF 1860), ss. 463, 467 . **I. L. R. 37 Bom. 666**

FRAUD.

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 95.
I. L. R. 37 Bom. 158

——— *Fraud and collusion of predecessors in title—Parties by descent precluded from setting up fraud.* The property in dispute belonged originally to Mahomedsahib, who in 1829 gave it to his wife Sabinibibi as dower. Sabinibibi sold it in 1863 to Sardarkhan, one of the two brothers of her daughter-in-law Fatmabibi. Sardarkhan died in 1873, and in 1875 his brother Mahomedkhan gave it in gift to Shabusaheb, one of the sons of Fatmabibi. Subsequently on Shabusaheb's death, his creditor sued his son and obtained a decree against him. In execution the property was sold and was purchased at auction by one Ramchandra who having transferred his right to the plaintiff, her agent brought the present suit against Shabusaheb's sister and his two brothers

FRAUD—*concld.*

to recover possession. *Held*, that the plaintiff was entitled to succeed. If all the said transactions were genuine, legal and valid, the defendants had no case at all, and if they were, as alleged by the defendants, fraudulent and collusive, the defendants were precluded, as parties by descent to the alleged fraud, from setting up their own iniquity to avoid the legal consequences of those transactions. *Doe, dem. Roberts* v. *Roberts*, 2 B. & A. 367, followed. SAYAD NAHANNU *v.* SABINBIBI (1911) . . . **I. L. R. 37 Bom. 217**

FRESH PROCEEDINGS.

See JURISDICTION OF CRIMINAL COURT.
I. L. R. 40 Calc. 71

G

GAMBLING.

See PREVENTION OF GAMBLING ACT (BOM. IV OF 1887), s. 4, CLS. (*a*), (*c*)
I. L. R. 37 Bom. 651

See PUBLIC GAMBLING ACT (III OF 1867) ss. 3 AND 4 . **I. L. R. 35 All. 1**

——— *Bombay Prevention of Gambling Act (IV of 1887), ss. 5, 6 and 7—Gaming in a common gaming-house—Search of the house without warrant issued under s. 6.—Presumption under s. 7 cannot arise in search conducted without warrant under s. 6.* The Deputy Commissioner of Police in Bombay, who was invested by the Commissioner of Police with power to issue warrants under s. 6 of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887), on receipt of certain information on oath, personally raided a house and searched it, without issuing a warrant under the provisions of s. 6. The accused seventeen in number were not seen gaming, but there were found three packs of playing-cards and small coin lying near them. The accused were tried for the offence of gaming in a common gaming-house; and the trying Magistrate applying to them the presumption raised by s. 7 of the Act, convicted them of an offence under s. 6. The accused applied to the High Court:—*Held*, that the presumption under s. 7 that the mere finding of cards and dice was to be taken as evidence that the house in which they were found was used as a common gaming-house, could only arise when the house is entered under warrant issued under s. 6 of the Act. *Held*, accordingly, that the accused should be acquitted and discharged. *Emperor* v. *Fernad, I. L. R. 31 Bom. 438*, considered. EMPEROR *v.* JAFFUR MAHOMED (1912).
I. L. R. 37 Bom. 402

GAMBLING DEBT.

See EVIDENCE ACT (I OF 1872), s. 92
I. L. R. 35 All. 558

GANJAM AND VIZAGAPATAM AGENCY RULES.

——— *Agent's order under s XVIII—Maintainability of petition to High Court under Rule XX—Interference of High Court in proper cases—S 244, bar by—Who can set up* A petition lies to the High Court under rule XX of the Ganjam and Vizagapatam Agency Rules, even though the Agent acted under Rule XVIII in dismissing an appeal *Jagannadha* v *Gopanna, I L R 16 Mad 229,* dissented from An order of the Agent summarily dismissing an appeal is a decree as it disposes of the rights of the parties, and under Rule XX the High Court may in a proper case (as here, where the Agent gives no reasons for dismissal) direct the Agent to review his judgment A person who was not a party to a previous suit cannot set up the effect of an order in execution in that suit as a bar to a suit against him *Quære* Whether when s 244, Civil Procedure Code, does not apply to Agency Tracts the principle of that section applies. VIKRAMA DEO *v* RAGHUNATHA PATRO (1913)

I. L. R 36 Mad. 128

GENERAL CLAUSES ACT (X OF 1897).

——— s 3 (25)—

——— *Provincial Small Cause Courts Act (IX of 1887) Sch. II Art 13—Court of Small Causes—Jurisdiction—Ferry—"Immovable propert?" —Suit to recover tolls alleged to be due to* that the [illegible] arises out [illegible] of immovable property under s 3 (25) of the General Clauses Act, 1897, and a suit by a lessee of a ferry to levy a toll alleged to be recoverable by him as such lessee, falls under, Art 13 of the second Schedule to the Provincial Small Cause Courts [illegible] Court 1897, [illegible] *Das, Punj Rec 1898, Case No 80, p 278* approved ABDUL HAMID KHAN *v* BABU LAL (1913)

I. L. R. 35 All. 156

——— s 6—

See EXECUTION OF DECREE

I. L R 40 Calc. 704

See HUSBAND AND WIFE

I L. R. 37 Bom. 393

GENERAL CLAUSES ACT (BENG. I OF 1899).

——— s. 8, cl. (e)—

See EXECUTION OF DECREE

I. L. R. 40 Calc 623

GHATWALI TENURE.

See ADVERSE POSSESSION

I. L. R. 40 Calc 173

GIFT

See NAIKINS . **I. L. R. 37 Bom. 116**

See REGISTRATION **I. L. R. 35 All. 3**

GIFT—*concld.*

——— **absolute, to son—**

See HINDU LAW—WILL.

I. L. R 40 Calc. 274

GIFT-OVER

See WILL . **I. L. R. 40 Calc. 192**

GOVERNMENT.

See BHAGDARI VILLAGE

I. L R. 37 Bom. 87

See LAND ACQUISITION ACT (I OF 1894), ss 3 (b), 11, AND 31 (1) AND (2)

I. L R. 37 Bom 76

——— **share of—**

See LAND ACQUISITION—COMPENSATION

I. L. R 40 Calc. 64

——— **suit against—**

See ABKARI ACT (BOM ACT V OF 1878), ss 32, 67 . **I. L R 37 Bom. 101**

GOVERNMENT CIRCULAR.

——— **effect of—**

See CRIMINAL REVISION

I. L R. 40 Calc. 41

GOVERNMENT OFFICER.

——— **suit against—**

See COURT OF WARDS ACT (BOM ACT I OF 1905), s 3 (c)

I. L. R. 37 Bom. 313

GOVERNMENT OF INDIA ACT, 1858 (21 & 22 Vict. c 106)

——— **ss. 65 to 67—**

See JURISDICTION OF CIVIL COURT.

I L. R. 40 Calc. 391

GRANT.

See VRITTI . **I. L R. 37 Bom. 409**

——— **Ekrarnama**—*Lease or License—Construction—Practice* Where a grant [illegible] a transfer of an interest in immoveable property, the grantees were in the position of tenants, if it did not, they were at least in the position of a licensees. Where in an on *ekrarnama* there were clauses by which the grantors reserved to themselves certain rights for limited purposes, but which, properly construed, gave the grantees exclusive possession of the property, the grant amounted to a lease To give exclusive possession there need not be express words, it is sufficient if the nature of the acts to be done by the grantee requires that he should have exclusive possession. *Roads* v. *The Overseers of Trumpington, L R. 6 Q B. 56,* referred to Distinction between a license and a lease lies in the fact that in the case of license there is no transfer of interest in land, whereas in the case of a lease there is transfer of

GRANT—*concld.*

such interest. Upon the construction of the instrument as a whole: *Held*, that the paramount intention of the parties was to create a present demise, and that the grantee was in the position of a tenant. MOHIPAL SINGH *v.* LALJI SINGH (1912)

17 C. W. N. 166

GRANTOR AND GRANTEE.

See ADVERSE POSSESSION.

I. L. R. 40 Calc. 173

GRAVEYARD.

See MAHOMEDAN LAW—ENDOWMENT.

I. L. R. 40 Calc. 297

——— *Trespass—Erection of a shed over a visible grave in a disused private grave-yard—Penal Code (Act XLV of 1860), s. 297.* The erection of a shed over a visible grave belonging to the complainant's family in a disused grave-yard, claimed to be private property of the trespasser, with the knowledge that the feelings of the complainant would be likely to be thereby wounded, is an offence under s. 297 of the Penal Code. *Per* RICHARDSON, J. The word "trespass" in s. 297 has not the same meaning as "criminal trespass" in s. 441 of the Code, but implies any violent or injurious act committed in the place, and with the knowledge or intent, defined in s. 297. JHULAN SAIN *v.* EMPEROR (1913)

I. L. R. 40 Calc. 548

GRIEVOUS HURT.

See PENAL CODE (ACT XLV OF 1860), ss. 300, 325. . **I. L. R. 35 All. 329**

GROUND-RENT.

——— **exemption from, to be express**—

See RIGHT OF SUIT.

I. L. R. 36 Mad. 373

GROUNDS OF REVISION.

See CRIMINAL REVISION.

I. L. R. 40 Calc. 41

GROVE-LAND.

See AGRA TENANCY ACT (II OF 1901) s. 4; CH. X **I. L. R. 35 All. 200**

GUARDIAN.

See HINDU LAW—WILL.

I. L. R. 37 Bom. 18

GUARDIAN AD LITEM.

See HINDU LAW—JOINT FAMILY.

I. L. R. 35 All. 571

GUARDIAN AND MINOR.

See GUARDIANS AND WARDS ACT (VIII OF 1890)

See MAJORITY ACT (IX OF 1875), s. 3

I. L. R. 35 All. 150

GUARDIANS AND WARDS ACT (VIII OF 1890).

——— *Jurisdiction of District Court—No power to order payment of money for minor's marriage by person not guardian —Concurrent jurisdictions when order passed under one jurisdiction can be taken to be passed under another.* The Guardians and Wards Act (VIII of 1890) does not give the District Court any power or authority over persons other than the guardian or the minor except in so far as it deals with the question as to who is the proper person to be appointed guardian, or whether a particular guardian should be removed or not and for the purpose of restoring the ward to the custody of the guardian. Under the Guardian and Wards Act no order can be passed directing a person not a guardian to pay a sum of money for the purposes of a minor's marriage. Where a Judge passing such an order under the Guardians and Wards Act, could have passed a similar order as a Judge of a Court of ordinary civil jurisdiction, the order cannot be treated as a decree in a suit. The two jurisdictions are wholly distinct though exerciseable by the same official. *Sadasiva Pillai* v. *Ramalinga Pillai, L. R. 2 I.A. 219*, and *Ledgard* v. *Bull, I.L.R. 9 All. 191*, distinguished. SOMAKKA v. RAMIAH. (1913) . . . . **I. L. R. 36 Mad. 39**

——— **s. 29**— *Guardian and Minor—Certificated guardian —Sale —Powers of certificated guardian different from those of a guardian under the general rule of law.* The powers of a certificated guardian are regulated and defined by the Guardians and Wards Act, and the rule of law, that, there being no mutuality in a contract to which a minor was a party, it could not be enforced by him, does not apply to a contract for the sale of immovable property entered into by the certificated guardian of a minor with the sanction of the Court; such a contract is valid and a suit for damages for breach of the contract will lie on behalf of the minor. *Mir Sarwarjan* v. *Fakhruddin Mahomed Chawdhuri, I. L. R. 39 Calc. 232*, distinguished. BABU RAM *v.* SAID-UN-NISSA, (1913)

I. L. R. 35 All. 499

——— **s. 35**—*Act XL of 1858—District Judge's power to take security bond from manager—Assignment of bond by District Judge—Suit against representatives of a deceased manager in respect of liability incurred by him, if lies.* It was competent to a District Judge acting under Act XL of 1858 to take a security bond in his own favour for the due discharge of his duties by a manager appointed by him. Such a bond can be validly assigned by the District Judge under s. 35 read with s. 2 (2) of the Guardians and Wards Act. BAHADUR SINGH *v.* BASUNTA KUMAR ROY (1913) . . . . . **17 C. W. N. 695**

——— **ss. 47, 48, 50**—*Application to be appointed guardian of minor, dismissed for default—Second application, if lies—Application refused—Appeal, if lies—Girl, infant, who has nearly attained majority—Marriage, consent of infant to, if necessary—Guardian of person, if should be appointed to enable giving her in marriage.* Where an applica-

GRANT—*concld.*

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GUARDIAN AND WARDS ACT (VIII OF 1890)—*concld*

——— s. 47—*concld.*

tion for appointment as guardian of an infant was dismissed for non appearance, and an application for a re hearing was refused *Held,* that a second substantive application for appointment as a guardian is maintainable Where the District Judge refused such an application as not maintainable *Held,* that an appeal lies to the High Court against the order Where a Mahomedan, after having divorced his wife, applied to be appointed guardian of his infant daughter, who was very close upon her majority, with the object of her giving her away in marriage to a suitable bridegroom *Held,* that, at her age, the consent *of the girl to the marriage was required, and the* application should not be proceeded with AHMAD ALI *v* RAISUNNESSA (1913)

17 C W. N. 429

GUJARAT TALUKDARS ACT (BOM. VI OF 1888).

——— s 31—*Incumbrance created by a Talukdar—Adverse possession for more than twelve years after the death of the Talukdar—Title—Limitation.* A person claiming as an incumbrancer for more than twelve years from the death of a Talukdar, can acquire title by adverse possession The incumbrance which is claimed by virtue of adverse possession since the death of a Talukdar would not fall within s 31 of the Gujarat Talukdars' Act (Bom Act VI of 1888) but would be an incumbrance arising from the operation of the law of limitation TALUKDARI SETTLEMENT OFFICER, GUJARAT *v* RIKHAVDAS PARSHOTTAMDAS (1912) . . . **I. L R. 37 Bom 380**

GUN.

See ARMS ACT (XI OF 1878), ss 13, 19 (*e*)

I. L. R 37 Bom 181

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HALF SISTER'S SON OF WIDOW.

See HINDU LAW—STRIDHAN

I. L. R 40 Calc. 82

HEREDITARY OFFICE

See VRITTI . **I. L. R. 37 Bom. 409**

HEREDITARY OFFICES ACT (BOM. III OF 1874)

——— ss. 11, 11 (A)—*Revenue Jurisdiction Act (X of 1876), s 4 (a)—Deshmukhi Vatan—Mirasi lease and mortgage by the Vatandar—Death of the Vatandar—Collector's order declaring the alienation null and void and directing the land to be restored to the representative of the deceased Vatandar—Adverse possession—Jurisdiction of Civil Courts* A Deshmukhi Vatandar executed a *mirasi* lease and

HEREDITARY OFFICES ACT (BOM. III OF 1874)—*concld*

——— s 11—*concld*

[illegible]

the Assistant Collector passed an order which declared the alienation to be null and void under section 11 of the Hereditary Offices Act (Bom. Act III of 1874) and directed the land to be re [illegible] the plaintiff [illegible] 1906 against [illegible] before the [illegible] a perpetual injunction restraining the defendants from recovering possession of the land The defendants contended that the suit was not maintainable by reason of section 4 (*a*) of the Revenue Jurisdiction Act (X of 1876) *Held,* that the order passed by the Assistant Collector directing the plaintiff to restore possession to the defendant being unauthorised under section 11 of the Hereditary Offices Act (Bom Act III of 1876), the Revenue Jurisdiction Act (X of 1876) was no bar to the maintenance of the suit *Held,* further, that the mere fact that an application was made by the defendant to the Assistant Collector within twelve years of the death of the alienor, did not interrupt plaintiff's adverse possession against the defendants MAGANCHAND *v.* VITHALRAV (1912) . . **I. L. R. 37 Bom. 37**

HEREDITARY OFFICES ACT, (BOM. V OF 1886).

——— s 2—

See HINDU LAW

I. L. R. 37 Bom. 598

HEREDITARY VILLAGE OFFICES ACT (MAD. III OF 1895).

See PENSIONS ACT, s 4

I. L. R. 36 Mad. 559

HIGH COURT.

See LAND ACQUISITION ACT (I OF 1894), s 54 . . **I. L. R 37 Bom. 506**

——— disciplinary jurisdiction of—

See BOMBAY REGULATION (II OF 1827), s 56 . . **I L. R. 37 Bom. 354**

——— superintendence and control by—

See CIVIL PROCEDURE CODE (ACT V OF 1908), ss 3, 115

I. L. R. 37 Bom 114

HIGH COURT, JURISDICTION OF.

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XLVI, R 1 ; s 141

I. L. R. 36 Mad. 16

HIGH COURT, JURISDICTION OF— *contd.*

See JURISDICTION OF HIGH COURT.

See LETTERS PATENT (AMENDED) OF THE BOMBAY HIGH COURT, s. 12.

I. L. R. 37 Bom. 494

1. ——— *Order under s. 476 of the Criminal Procedure Code by Settlement Officer—Whether civil appellate or criminal appellate side can revise—Criminal Procedure Code (Act V of 1898), s. 439—Civil Procedure Code (Act V of 1908), s. 115—High Courts Act (24 & 25 Vict. c. 104), ss. 14 and 15.* In the case of an order passed by a Civil or Revenue Court under s. 476 of the Criminal Procedure Code, (i) S. 439 of the Criminal Procedure Code has no application; (ii) The High Court can exercise the powers vested in it by s. 115 of the Civil Procedure Code of s. 15 of the High Courts Act ; and (iii) The Bench of the High Court exercising criminal jurisdiction cannot, as such, deal with the matter on revision, but the Judges composing that Bench may do so, if authorised by the Chief Justice under s. 14 of the High Court Act. *Kali Prasad Chatterjee* v. *Bhuban Mohini Dasi, 8 C. W. N. 73,* and *Emperor* v. *Gopal Barik, I. L. R. 34 Calc. 42,* considered and approved of to a certain extent. EMPEROR *v.* HAR PRASAD DAS (1913) . . . **I. L. R. 40 Calc. 477**

2. ——— *Chota Nagpur Tenancy Act (Beng. VI of 1908), s. 27—Application for enhancement of rent—Jurisdiction of the High Court to set aside an order of Deputy Commissioner, passed without jurisdiction, on appeal from an order of Deputy Collector—Judicial proceeding.* Proceedings on applications for enhancement of rent under s. 27 the Chota Nagpur Tenancy Act are judicial proceedings, and Deputy Commissioners in the performance of their judicial duties under the Act are Courts subject to the appellate jurisdiction of the High Court. The High Court has jurisdiction to interfere in cases where the Courts of Collectors have either exceeded the jurisdiction or failed or refused to exercise the jurisdiction vested in them by the Chota Nagpur Tenancy Act: *Chaitan Patgosi Mahapatra v. Kunja Behari Patnaik, I. L. R. 38 Calc. 832,* referred to. KARTIK CHANDRA OJHA *v.* GORA CHAND MAHTO (1913)

I. L. R. 40 Calc. 518

3. ——— *Stay of Execution—Inherent powers of Court—Special leave to appeal to the Privy Council—Civil Procedure Code (Act V of 1908) ss. 112 and 151; O. XLI. r. 5 (2)—Letters Patent, 1865, cl. 36.* The High Court is competent to make an order for stay of proceedings in execution of its decree in view of an application by the Judgment-debtor to the Judicial Committee for special leave to appeal to His Majesty in Council. *Hurro Chandar Roy Chowdhry* v. *Shoorodhonee Debia, 9 W. R. 402, Panchanan Singha Roy v. Dwarka Nath Roy, 3 C. L. J. 29, Hukum Chand Boid* v. *Kamalanand Singh, I. L. R. 33 Calc. 927 ; 3 C. L. J. 67, Mahomed Wahiduddin* v. *Hakiman, I. L. R. 25 Calc. 757, Tara Pado Ghose* v. *Kamini Dassi, I. L. R. 29 Calc. 644, Mahadeo* v. *Budhai Ram I. L. R.*

HIGH COURT, JURISDICTION OF— *concld.*

26 All. 358, Gajju v. *King Emperor, 2 All. L. J. 173, Brij Coomaree* v. *Ramrick Dass, 5 C. W. N. 781, Nityamoni Dasi* v. *Madhu Sudan Sen, I. L. R. 38 Calc. 335 ; L. R. 38 I. A. 74,* referred to. NANDA KISHORE SINGH *v.* RAM GOLAM SAHU (1912)

I. L. R. 40 Calc. 955

HIGH COURT, BOMBAY, APPELLATE SIDE RULES.

——— **Rule 65—**

See BOMBAY REGULATION II OF 1827, s. 52. . . **I. L. R. 37 Bom. 303**

——— **Rule 725—**

See CIVIL PROCEDURE CODE 1908, O XLI, R. 10, AND S. 129

I. L. R. 37 Bom. 572

HIGH COURT, BOMBAY, CIVIL CIRCULAR.

——— **51—**

See CIVIL PROCEDURE CODE, 1908, O. XLI, R. 11. **I. L. R. 37 Bom. 610**

——— **96, cl.** *(l)—Decree on mortgage—Mortgage executed by father and two sons for family purpose—Suit against the father and his sons—Decree—Execution against father and sons—Proclamation of sale putting up the right, title and interest of the father and sons for sale—A condition of sale in terms of cl. (l)—Grandsons who were not parties to the suit or execution proceedings not bound by the sale.* G. and two out of his six sons, forming an undivided family, mortgaged family-property to plaintiffs' father for family purposes. The plaintiffs brought a suit upon the mortgage against G., five of his sons and three grandsons by his sixth son who had died. The suit was decreed in plaintiffs' favour. In execution of the decree, the mortgaged property was put up to sale and purchased by the plaintiffs at the Court-sale. In the proclamation of sale the right, title and interest of the defendants to the suit was mentioned ; and one of the conditions of sale was in the terms of clause (l) to High Court Civil Circular 96. The plaintiffs were put in possession of the property. The defendants Nos. 7 to 14, 16 and 17 to 19, the grandsons of G. by five of his sons who were not parties to the mortgage suit or to the execution proceedings, having obstructed the plaintiffs in their possession, to plaintiffs brought the present suit to establish their title against those defendants. The defendants contended that their right to the property did not pass at the sale to the plaintiffs and they were not bound by the decree to which they were not parties. The lower Courts disallowed the contention on the ground that the defendants were represented in the suit by their fathers and consequently their rights passed at the sale to the plaintiffs. On second appeal :—*Held,* that the defendants' interests in the mortgaged property did not pass to the plaintiffs at the Court-sales inasmuch as by an express de-

HIGH COURT, BOMBAY, CIVIL CIRCULAR—*concld*

claration made by the selling Court and accepted by the purchasing plaintiffs those interests were formally and deliberately excluded from the sale TIMMAPPA *v* NARSINHA TIMAYA (1913)
I L R 37 Bom. 631

HIGH COURTS ACT (24 & 25 VICT C 104).

——— ss 14, 15—

See HIGH COURT JURISDICTION OF
I L R 40 Calc 477

HINDU JOINT FAMILY

See CENTRAL PROVINCES GOVERNMENT WARDS ACT s 18
I L R 40 Calc 784

HINDU LAW

See U P LAND REVENUE ACT (III OF 1901) ss 111 112 AND 233 (*k*)
I L R 35 All. 126

HINDU LAW—ADOPTION

See LIMITATION ACT (IX OF 1908) SCH I ART 118 I L R 37 Bom 513

1 ——————— *Ahirs—Validity of adoption after marriage of adopted son* *Held* that amongst Ahirs the adoption of son after his marriage has taken place is not permissible *Pichuiayyan* v *Subbayyan I L R 13 Mad 128* followed JHUNKA PRASAD *v* NATHU (1913)
I L R 35 All. 263

2 ——————— *Widow—Imp*

Amendment of the Act excluding daughters [illegible] *succeeding to vatan lands—Adoption of a son of the daughter by the widow—Adoption invalid—Will—Construction* A testator by his will dated the 9th March 1885 bequeated his property which for the most part consisted of vatan lands to his

HINDU LAW—ADOPTION—*contd*

two daughters in perpetuity He enjoined his wife not to make over the property to anybody except to my daughters The daughters were authorised only to relinquish their right in favour of each other but not to anybody else In 1886 the Bombay Hereditary Offices Act (III of 1874) was amended by the Bombay Act V of 1886 whereby the female members of a vatan were postponed to male members in the matter of succession The testator s widow thereupon adopted [illegible]

of defendant No 1 was invalid alleging that [illegible] was in the will an implied prohibition forbidding the widow to adopt It was contended in defence that the right of the widow to make the adoption was not taken away by anything expressed in the will *Held* that the adoption was invalid inasmuch as it could not be upheld without giving the go by to the testator s expressed wishes In the will not only was there a complete bequest of the whole estate to the daughters but the widow was in terms prohibited from disposing of the property to anyone except the daughters *The Collector of Madura v Moottoo Ramalinga Sathupathy 12 Moo I A 397* distinguished MALGAUD PARAGAUDA *v* BABAJI DATTU (1912)
I L R 37 Bom. 107

3 ——————— *Widow of the last vatandar—Adoption by the widow—Death of the adopted son unmarried—Second adoption by the adopted son—Vesting of the property in the male member of the vatandar family—Divesting of estate by adoption—Bombay Hereditary Offices Act (Bom Act V of 1886) s 2—Second adoption not valid* On the death of the last vatandar his widow went [illegible] the vatan property She adopt [illegible] 1904 [illegible] rever [illegible] he was [illegible] vatan property *Held* that [illegible] make a second adoption for the property was on the death of her first adopted son vested in the plaintiff a male member of the family and it could not subsequently be divested by any adoption made by her BHIMABAI *v* TAYAPPA MURARRAO (1913)
I L R. 37 Bom 598

4 ——————— *Settlement of immoveable property by adopting widow in favour of her daughter—Settlement assented to by the natural father of the adopted boy—Attainment of majority by the adopted son—Repudiation of the Settlement—Settlement not enforceable* A settlement of immoveable property by an adopting widow in favour of her daughter to take effect upon the daughter attaining majority assented to by the natural father of the adopted boy at the time of adoption cannot be enforced by the daughter against the adopted son who repudiated it on majority VYASACHARYA *v* VENKUBAI (1912)
I L R 37 Bom. 251

HINDU LAW—ADOPTION—*contd.*

5. ——————————— *Adoption, validity of—Sapinda, consent of, obtained for consideration—Evidence Act (I of 1872), s. 32, sub-ss. 3 and 5,—Admissibility of statement made by deceased person.* Where under the Hindu Law, the consent of a sapinda is required to validate an adoption by a widow and that consent is obtained in exchange for a valuable consideration the transaction will vitiate the adoption. *Rami Reddi* v. *Rangamma, 11 Mad. L. J. 20,* followed. *Srinivasa Ayyangar* v. *Rangasami Ayyangar, I.L.R. 30 Mad. 450,* distinguished. A statement made by a deceased sapinda admitting that he had received sum of money in connection with an adoption was sought to be proved in order to invalidate the adoption :—*Held*, that the statement was admissible under section 32, sub-s. (3) of the Evidence Act, it being a statement made against his pecuniary or proprietary interest. *Held*, also, that the statement was admissible under section 32, sub-s. 5, as it related to the existence of a relationship; and this notwithstanding that the relationship was not in dispute at the time when the statement was made. DANAKOTI AMMAL *v.* BALASUNDARA MUDALIAR. (1913)

I. L. R. 36 Mad. 19

6. ——————————— *Adoption by mother with the assent of a deceased son—Objection by existing sapinda—Invalidity of adoption.* A consent previously obtained from a deceased sapinda cannot be efficacious to validate an adoption which is not approved of or objected to by the persons who are the nearest sapindas at the time the adoption is actually made. Strange's Hindu Law, Vol. I, p. 80, and Sircar on adoption, p. 255, not followed. *Per* CURIAM : There is a distinction between the case of an adoption in an undivided family and that in a divided family, as regards the persons whose assent is sufficient. *The Collector of Madura* v. *Moottoo Ramalinga Sathupathy, 12 Moo. I. A. 396, 442, Vellanki Venkata Krishan Rao* v. *Venkata Rama Lakshmi, I.L.R. 1 Mad. 174,* and *Subrahmanyam* v. *Venkamma, I.L.R. 26 Mad. 627, 635,* referred to. MAMI *v.* SUBBARAYAR (1913)

I. L. R. 36 Mad. 145

7. ——————————— *Authority to adopt given to two widows—Construction—Authority whether several or joint—Exercise of power by survivor—Restriction as to class of boys—Powers, how to be construed—Power given by a Hindu, how to be construed when ambiguous.* Where a testator by his will provided ; "Permission will be granted to my two wives to adopt a boy to arrange to offer water and funeral oblations to me, the adopted boy will have to be taken from amongst my near representatives but my wives will adopt whomsoever they would select," and on the death of one of the widows, the surviving widow adopted her brother's son: *Held*, that the testator intended to confer authority to adopt by the will itself and not by a separate instrument. That the authority to adopt was conferred on the widows severally and not jointly, and the surviving widow could lawfully exercise the power of adoption conferred

HINDU LAW—ADOPTION—*concld.*

by the Will in construing a document of this description the Court would consider that the person giving the authority intended his widows to do that which the law allowed and not to do something which was, if not absolutely illegal, very unusual and not practised amongst Hindus. *Quære*: Whether when an authority to adopt is in fact conferred on two widows jointly, adoption by the survivor of them alone is valid. *Venkata* v. *Rangaya, I. L. R. 29 Mad. 437, 444,* doubted. That the expression "from amongst my near representatives" being strictly speaking meaningless, no restriction as to the class of boys within which the choice was to be made was to be read into it. That it was not intended that the selection was to be made by the widows concurrently. Where the general intention of a Hindu to be represented by an adopted son is clear, effect should be given to such intention, if it is possible to do so without contravening the law, and the Court will not be astute to defeat the intenton of the testator. *Surja Narayan* v. *Venkata Ramana, I. L. R. 26 Mad. 681.* All powers are to be liberally construed in equity in furtherance of the purpose for which they were created. SARADA PROSAD PAL *v.* RAMA PATI PAL (1912) **17 C. W. N. 319**

HINDU LAW—ALIENATION.

1. ——————————— *Alienation—Custom of agriculturists in the Punjab—Ancestral land—Power of father to alienate—Necessity—"Just debts"—Burden of proof—Debts of proprietor incurred by reckless extravagance and for illegal or immoral purposes.* In a suit by the respondents to have set aside an alienation of part of the family property made by their father in favour of the appellant, alleging that by the custom of agriculturists in the Punjab he was not competent to sell ancestral land without necessity, that there had been no necessity for the sale, that their father was a debauchee and an extravagant person, and that the debts for which the sale was made were incurred for immoral and illegal purposes, the appellant did not deny the custom though he traversed all the other allegations in the plaint, and contended that, the alienation having been made for their father's antecedent debts, it was for the respondents to show that the debts were contracted for illegal or immoral purposes. There were concurrent findings by the Courts below that the respondents' father was recklessly extravagant and did not know how to manage his affairs properly, and that certain specific debts were "just debts," and others were not : *Held* (affirming the decision of the Chief Court of the Punjab), that the custom set up, not being disputed, was applicable to the case, that the payment of a "just debt" by the male proprietor of lands to which the custom applied was a necessity for which he could validly alienate ancestral property, and that the respondents were entitled to possession of the property sued for on re-payment to the appellant of such part of the purchase money as both Courts concurrently found to be just debts, the

HINDU LAW—ALIENATION—*contd*

payment of which was a necessity The ruling in *Deti Ditta v Saudagar Singh*, (1900) Punjab Rec No 65, that a ' just debt ' means ' a debt which is

SINGH v BALWANT SINGH (1912)
I L R. 40 Calc 288

2 ———————— *Mortgage by widow of part of the estate—Legal necessity—Presumption—Reversioner* Alienation by way of mortgage by Hindu widow, as heiress, of a portion of the estate of her deceased husband without proof either of legal necessity or of reasonable enquiry and honest belief as to its existence, but with the consent of the next reversioner for the time being, will be valid and binding on the actual reversioner, if the presumption of legal necessity or of reasonable enquiry and honest belief raised by such consent is not rebutted by more cogent proof *Nobokishore Sarma Roy* v *Hari Nath Sarma Roy, I L R 10 Calc 1102*, considered *Bajrangi Singh* v *Manokarnika Bakhsh Singh, I L R 30 All 1, L R 35 I A 1* referred to DEBI PROSAD CHOWDHURY *v* GOLAP BHAGAT (1913)
I L R 40 Calc 721

3 ———————— *Alienation by father in favour of adopted son in family whose adoption alleged to be illegal—Form of suit —Suit for partition in case of stranger in Hindu family—Inaction and acquiescence of father of joint family, how far binding on sons—Limitation—Minority—Form of decree* In a suit instituted in 1907 by members of a Hindu joint family governed by the Mitakshara law to set aside their father s alienation of ancestral property, against the assignee the first respondent, the father being made a *pro formâ* defendant, the appellants alleged that their father improperly made in 1898 a disposition of a specific portion of the property to the respondent who had been adopted by the widow of one or two brothers (with the consent of the other) from whom their father (the adopted son of the other brother) inherited the family property and they contended that the adoption of the first respondent was invalid for various reasons, and that they were entitled to recover the property alienated The defence so far as material, was that the appellants were bound by the acquiescence of their father in admitting the first respondent to the family, and that the suit was barred by limitation The respondents also objected to the form of the suit which they contended should have been for partition At the settlement of issues, the appellants' pleader admitted " that their father had actually given possession in 1898 of the property in suit to the first respondent to enjoy it exclusively previously, since 1887, he was living as a joint member of the family, and jointly enjoying the profits by reason of the inaction and acquiescence of the appellants' father in that mode of enjoy

HINDU LAW—ALIENATION—*concld*

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cept in a suit for partition would be to deny the right to relief altogether, since the basis of the claim was that the appellants were entitled to the estate as a joint and undivided estate, and desired to enjoy it as such Also it might be that the first respondent was entitled to stand in the shoes of the appellants' father as to the share which would come to the latter on a partition, and if he established such a position, the Court would at the instance of the respondent decree a partition between the appellants and their father Without therefore expressing any opinion as to its validity in law or fact, their Lordships thought that on the pleadings, it was open to the first respondent to set up such a case *Held*, also, that though a partition made by a Hindu father may under some circumstances bind his minor sons (as in *Balkishen Das* v *Ram Narain Sahu, I L R 30 Calc 738, L R 30 I A 139*, yet if on the partition a share is given to an absolute stranger (as the first respondent would be if his adoption were invalid) the partition may be impeached as a disposition of property made without consideration unless it can be supported as a *bonâ fide* compromise of a disputed claim If, therefore, the adoption of the first respondent were wholly invalid, the appellants were entitled to succeed in the absence of any other defence The Appellate Court as to limitation had decided that the suit was not barred as against the first appellant, but only as against the rest of the appellants who were minors, and had not been born at the time (1887) when

lowing the appeal were of opinion that they could not, on the materials before them, finally determine the rights of the parties, and remanded the case for trial with a declaration that it was competent to the Court, in the event of the first respondent failing in his other defences to make the whole or any part of the relief granted to the appellants conditional on their assenting to a partition so far as regarded the father's interest in the estate,

I L R 40 Calc 966

HINDU LAW—DAUGHTER'S ESTATE.

———————— *Decree for possession of father's estate obtained by daughter—Right of daughter's sons to execute such decree* The daughter of a separated Hindu obtained a decree for possession of her father's estate against certain trespassers Before, however, she could obtain possession, she died and her sons applied for execution. *Held*, that the daughter represented her father's

HINDU LAW—DAUGHTER'S ESTATE—*concld.*

estate when she brought her suit for possession and that the persons who succeeded to the estate were entitled to execute the decree which she had obtained. MAHADEO SINGH *v.* SHEO KARAN SINGH (1913) . . . **I. L. R. 35 All. 481**

HINDU LAW—ENDOWMENT.

1. ———————— *Endowment—Right of succession to sebaitship of temple belonging to Ballavacharya Gossains—Evidence of dedication —Claim of persons incompetent to be sebaits (as being Bhats) of Ballav temple disallowed as defeating the purpose for which the founder established the worship —Title—Proof of independent title to succession as sebait.* In a suit for possession and the right of sebaitship of a temple belonging to the Ballavacharya Gossains founded by one Muttuji, the maternal grandfather of the plaintiffs (appellants), the defendant (respondent) contended that the ordinary Hindu law was not applicable as alleged by the plaintiffs, and that daughters' sons were excluded by custom from succession. *Held,* that, apart from positive testimony on the point, the performance of the worship of the idol in accordance with the rites of the sect for whose benefit it was held, might be treated as good evidence of dedication, and the ordinary rule of Hindu law relating to the descent of private property was not applicable. *Held,* also, that the rule that the heirs of the founder succeed to the sebaitship laid down in *Gossamee Sree Greedhareejee v. Romanlalljee Gossamee, I. L. R. 17 Calc. 3 ; L. R. 16 I. A. 137,* was, as there implied, subject to the condition that the devolution in the ordinary line of descent is not inconsistent with or opposed to the purpose the founder had in view in establishing the worship. In the present case the appellants being Bhats, and not belonging to the Gossain *kul,* were not competent to be sebaits of a Ballav temple where the rites were performed according to the Ballav ritual, which, it was clearly established, they could not perform. To allow their claim would defeat the purpose for which the worship was established. *Held,* further, that the respondent had established an independent title of his own to the temple as being the nearest male relative of Muttuji, both being descendants of two full brothers. The idol in the temple was brought from his temple at Nathdwara, and the worship founded by Muttuji was an off-shoot of the worship at Nathdwara. The temple was also built on land belonging to the Tekait respondent with the permission of his ancestor, who held the office of Tekait at the time. He had therefore a clear title according to the customs and usages of the Ballav *kul* to the sebaitship of the temple. MOHAN LALJI *v.* GORDHAN LALJI MAHARAJ (1913) **I. L. R. 35 All. 283**

2. ———————— *Debutter—Idol, destruction or mutilation of, if terminates endowment—Consecration of new idol, effect of—Land given for worship of idol—Grantee if bound to apply proceeds for service of new idol—Statement partly against one's interest and partly self-regarding—Admissibility.* When an image is mutilated or destroyed the religious purpose does not come to an end, and a new image may be established and consecrated in order that it may be worshipped as intended by the original founder. Where the site where an image which was established by an ancestor of the plaintiff was forty years before the suit washed away and the image itself was broken to pieces, but continued to be worshipped in that condition out of the profits of some land made over by the ancestor of the plaintiff to an ancestor of the defendent for that purpose, and the plaintiff having now established and consecrated a new image under the same name in a new temple in the same village, called upon the defendant to perform the worship of the image out of the profits of the land, and the defendant having refused, plaintiff brought this suit to compel the defendant to perform the worship and in the alternative for ejectment: *Held,* that upon these facts the plaintiff was entitled to a decree for ejectment. A statement by a predecessor of the defendant that the land had been given in order that the income might be applied for the worship of the grantee's family idols and also of the image established by the plaintiff's ancestor, was admissible against the defendant to prove that the land was given for the purpose of the image, but not in his favour to prove that it was given for the worship of the defendant's family idols. BIJOY CHAND MAHATAP *v.* KALI PADA CHATTERJEE (1913) **17 C. W. N. 1013**

HINDU LAW—ILLEGITIMACY.

———————— *Illegitimate son Mitakshara, Chap. I, s. 12—Dasi-putra, meaning of—Illegitimate son of a Sudra, share taken by him in father's property.* The word *dasi-putra* as used in Mitakshara, Chap. I, s. 12, which provides for the illegitimate son of a *Sudra* getting half of the share of a legitimate son in the father's property, has a much wider meaning than a son begotten on a female slave, and if a *Sudra* governed by the Mitakshara law has a permanent, continuous and exclusive concubine who lives as a member of his family, she is a *dasi* and his illegitimate son by her who is himself brought up as a member of the family is a *dasi-putra* within the meaning of the rule laid down in the Mitakshara. *Jogendra Bhupati* v. *Nityananda Man Singh, L. R. 17 I. A. 128 : I. L. R. 18 Calc. 151, Rahi* v. *Gavinda, I. L. R. 1 Bom. 97, Sadu* v. *Baiza, I. L. R. 4 Bom. 37, Krishnayyan* v. *Muttuswami, I. L. R. 7 Mad. 407, Har Govinda* v. *Dharam, I. L. R. 6 All. 329, Karuppannan* v. *Bulokan, I. L. R. 23 Mad. 16, Seshgiri* v. *Girewa, I. L. R. 14 Bom. 282, Ramkali* v. *Jamba, I. L. R. 30 All. 508, Sarasuti v. Mannu, I. L. R. 2 All. 134, Inderan* v. *Ramswami, 3 B. L.R. P. C. 1 ; 13 Moo. I. A. 141, Meenakshi* v. *Appakuti, I. L. R. 33 Mad. 226, Annaayyan* v. *Chinnan, I. L. R. 33 Mad. 366,* referred to. *Ram Saran* v. *Tek Chand, I. L. R. 28 Calc. 194,* distinguished. CHATTURBHUJ PATNAIK *v.* KRISHNA CHANDRA PATNAIK (1912) **17 C. W. N. 442**

HINDU LAW—INHERITANCE.

1 ———————— *Ascetics—Sudras—Rules relating to ascetic persons of the Sudra caste* A *Sudra* cannot enter the order of *yati* or *sannyasi*, and therefore a *Sudra* who becomes an ascetic is not excluded from inheritance to his family estate unless some usage is proved to the contrary . *Dharampuram* v. *Virapandiyam*, *I. L R 22 Mad 302*, followed HARISH CHANDRA ROY v ATIR MAHMUD (1913)
I. L. R. 40 Calc. 545

2. ———————— *Succession to stridhanam—preference of co wife's daughter to sapindas of husband* Under the Mitakshara law of inheritance, the daughter of a co wife of a deceased woman, married in one of the approved ... entitled to succeed to her stridhanam pro... husband, ... 11 of ... applied. Colebrooke's translation of 'sapinda' in that *placitum* as 'kinsmen allied by funeral oblations' is incorrect: the correct meaning being 'kinsmen al...

... of a woman married according to an orthodox form who has left no issue, will devolve on her

...

p 580, referred to. NANJA PILLAI v SIVAGAMITHACHI (1913) **I. L. R. 36 Mad. 118**

3. ———————— *exclusion from—inheritance—Dayabhaga—Murder of father—... Partition suit by heir of excluded*

...

Civil procedure Code (*Act V of 1908*), ... excluded from inheritance

HINDU LAW—INHERITANCE—*concld*

out of the property An after born son of the disqualified co parcener is also entitled to maintenance as a dependent member of the family. A single suit by all three is maintainable under O. I, r. 1, Civil Procedure Code NILMADHAB MITTER v. JOTINDRA NATH MITTER (1913)
17 C W. N. 341

4 ———————— *Dayabhaga—Great grandfather's great grandson and father's brother's daughter's son, preferential heir who is—Stare decisis, doctrine of* As between the great-grandson of the great grandfather of a deceased owner and the latter's father's brother's daughter's son, the latter is, upon the authority of the Full Bench decisions in *Gooroo Gobind* v *Anund Lal*, *5 B L R 15*, *13 W R (F B) 49*, *Digumbar Ray* v *Moti Lal*, *I L R 9 Calc 563*, the preferential ...

... RAY v AMRITA LAL MUKERJEE (1911)
17 C. W N. 492

HINDU LAW—JOINT FAMILY.

1. ———————— *Joint family—Mitakshara—Copartnership—Presumption as to law governing family settling in province other than that of its origin—Transfer of the ancestral property—Liability of sons to pay the debts of their* ...

...

formed the subject matter ... 19th March 1900, Amrita Lal Pandey executed a deed of conveyance, whereby he transferred his ancestral property to the defendants Nos 1 to 4, in satisfaction of certain debts incurred by him in 1892 and 1895 He was joined in this conveyance by the defendants Nos 5 to 7 On the 26th December 1900, Amrita Lal Pandey died, leaving ...

HINDU LAW—DAUGHTER'S ESTATE—*concld.*

estate when she brought her suit for possession and that the persons who succeeded to the estate were entitled to execute the decree which she had obtained. MAHADEO SINGH *v.* SHEO KARAN SINGH (1913) . . . **I. L. R. 35 All. 481**

HINDU LAW—ENDOWMENT.

1. ——————————— *Endowment—Right of succession to sebaitship of temple belonging to Ballavacharya Gossains—Evidence of dedication —Claim of persons incompetent to be sebaits (as being Bhats) of Ballav temple disallowed as defeating the purpose for which the founder established the worship —Title—Proof of independent title to succession as sebait.* In a suit for possession and the right of sebaitship of a temple belonging to the Ballavacharya Gossains founded by one Muttuji, the maternal grandfather of the plaintiffs (appellants), the defendant (respondent) contended that the ordinary Hindu law was not applicable as alleged by the plaintiffs, and that daughters' sons were excluded by custom from succession. *Held,* that, apart from positive testimony on the point, the performance of the worship of the idol in accordance with the rites of the sect for whose benefit it was held, might be treated as good evidence of dedication, and the ordinary rule of Hindu law relating to the descent of private property was not applicable. *Held,* also, that the rule that the heirs of the founder succeed to the sebaitship laid down in *Gossamee Sree Greedhareejee v. Romanlalljee Gossamee, I. L. R. 17 Calc. 3 ; L. R. 16 I. A. 137,* was, as there implied, subject to the condition that the devolution in the ordinary line of descent is not inconsistent with or opposed to the purpose the founder had in view in establishing the worship. In the present case the appellants being Bhats, and not belonging to the Gossain *kul,* were not competent to be sebaits of a Ballav temple where the rites were performed according to the Ballav ritual, which, it was clearly established, they could not perform. To allow their claim would defeat the purpose for which the worship was established. *Held,* further, that the respondent had established an independent title of his own to the temple as being the nearest male relative of Muttuji, both being descendants of two full brothers. The idol in the temple was brought from his temple at Nathdwara, and the worship founded by Muttuji was an off-shoot of the worship at Nathdwara. The temple was also built on land belonging to the Tekait respondent with the permission of his ancestor, who held the office of Tekait at the time. He had therefore a clear title according to the customs and usages of the Ballav *kul* to the sebaitship of the temple. MOHAN LALJI *v.* GORDHAN LALJI MAHARAJ (1913) **I. L. R. 35 All. 283**

2. ——————————— *Debutter—Idol, destruction or mutilation of, if terminates endowment—Consecration of new idol, effect of—Land given for worship of idol—Grantee if bound to apply proceeds for service of new idol—Statement partly*

HINDU LAW—ENDOWMENT—*concld.*

against one's interest and partly self-regarding—Admissibility. When an image is mutilated or destroyed the religious purpose does not come to an end, and a new image may be established and consecrated in order that it may be worshipped as intended by the original founder. Where the site where an image which was established by an ancestor of the plaintiff was forty years before the suit washed away and the image itself was broken to pieces, but continued to be worshipped in that condition out of the profits of some land made over by the ancestor of the plaintiff to an ancestor of the defendent for that purpose, and the plaintiff having now established and consecrated a new image under the same name in a new temple in the same village, called upon the defendant to perform the worship of the image out of the profits of the land, and the defendant having refused, plaintiff brought this suit to compel the defendant to perform the worship and in the alternative for ejectment: *Held,* that upon these facts the plaintiff was entitled to a decree for ejectment. A statement by a predecessor of the defendant that the land had been given in order that the income might be applied for the worship of the grantee's family idols and also of the image established by the plaintiff's ancestor, was admissible against the defendant to prove that the land was given for the purpose of the image, but not in his favour to prove that it was given for the worship of the defendant's family idols. BIJOY CHAND MAHATAP *v.* KALI PADA CHATTERJEE (1913) **17 C. W. N. 1013**

HINDU LAW—ILLEGITIMACY.

——————————— *Illegitimate son Mitakshara, Chap. I, s. 12—Dasi-putra, meaning of—Illegitimate son of a Sudra, share taken by him in father's property.* The word *dasi-putra* as used in Mitakshara, Chap. I, s. 12, which provides for the illegitimate son of a *Sudra* getting half of the share of a legitimate son in the father's property, has a much wider meaning than a son begotten on a female slave, and if a *Sudra* governed by the Mitakshara law has a permanent, continuous and exclusive concubine who lives as a member of his family, she is a *dasi* and his illegitimate son by her who is himself brought up as a member of the family is a *dasi-putra* within the meaning of the rule laid down in the Mitakshara. *Jogendra Bhupati* v. *Nityananda Man Singh, L. R. 17 I. A. 128 : I. L. R. 18 Calc. 151, Rahi* v. *Gavinda, I. L. R. 1 Bom. 97, Sadu* v. *Baiza, I. L. R. 4 Bom. 37, Krishnayyan* v. *Muttuswami, I. L. R. 7 Mad. 407, Har Govinda* v. *Dharam, I. L. R. 6 All. 329, Karuppannan* v. *Bulokan, I. L. R. 23 Mad. 16, Seshgiri* v. *Girewa, I. L. R. 14 Bom. 282, Ramkali* v. *Jamba, I. L. R. 30 All. 508, Sarasuti v. Mannu, I. L. R. 2 All. 134, Inderan* v. *Ramswami, 3 B. L.R. P. C. 1 ; 13 Moo. I. A. 141, Meenakshi* v. *Appakuti, I. L. R. 33 Mad. 226, Annaayyan* v. *Chinnan, I. L. R. 33 Mad. 366,* referred to. *Ram Saran* v. *Tek Chand, I. L. R. 28 Calc. 194,* distinguished. CHATTURBHUJ PATNAIK *v.* KRISHNA CHANDRA PATNAIK (1912) **17 C. W. N. 442**

HINDU LAW—INHERITANCE.

1 ———————— *Ascetics—Sudras—Rules relating to ascetic persons of the Sudra caste* A *Sudra* cannot enter the order of *yati* or *sannyasi*, and therefore a *Sudra* who becomes an ascetic is not excluded from inheritance to his family estate unless some usage is proved to the contrary . *Dharampuram* v. *Virapandiyam, I. L R 22 Mad 302,* followed HARISH CHANDRA ROY v ATIR MAHMUD (1913)

I. L. R. 40 Calc. 545

2. ———————— *Succession to stridhanam—preference of co wife's daughter to sapindas of husband* Under the Mitakshara law of inheritance, the daughter of a co wife of a deceased woman, married in one of the approved [illegible] to succeed to her stridhanam pro- [illegible] husband, [illegible] 11 of [illegible] applied. Colebrooke's translation of 'sapinda' in that *placitum* as 'kinsmen allied by funeral oblations' is incorrect: *the correct meaning being 'kinsmen al* [illegible]

[illegible] of a woman married according to an orthodox form who has left no issue, will devolve on her [illegible]

p 580, referred to. NANJA PILLAI v [illegible] THACHI (1913) . **I. L. R. 36 Mad. 118**

3. ———————— *exclusion from—inheritance—Dayabhaga—Murder of father—* [illegible] *Partition suit by heir of excluded* [illegible]

Civil procedure Code (*Act* [illegible]) [illegible] excluded from inheritance [illegible]

HINDU LAW—INHERITANCE—*concld*

out of the property An after born son of the disqualified co parcener is also entitled to maintenance as a dependent member of the family. A single suit by all three is maintainable under O. I, r. 1, Civil Procedure Code NILMADHAB MITTER v. JOTINDRA NATH MITTER (1913)

17 C W. N. 341

4 ———————— *Dayabhaga—Great grandfather's great grandson and father's brother's daughter's son, preferential heir who is—Stare decisis, doctrine of* As between the great-grandson of the great grandfather of a deceased owner and the latter's father's brother's daughter's son, the latter is, upon the authority of the Full Bench decisions in *Gooroo Gobind* v *Anund Lal, 5 B L R 15 , 13 W R (F B) 49, Digumbar Ray* v *Moti Lal, I L R 9 Calc 563, the preferential* [illegible]

[illegible] RAY v AMRITA LAL MUKERJEE (1911)

17 C. W N. 492

HINDU LAW—JOINT FAMILY.

1. ———————— *Joint family—Mitakshara—Copartnership—Presumption as to law governing family settling in province other than that of its origin—Transfer of the ancestral property—Liability of sons to pay the debts of their* [illegible]

[illegible] formed the subject [illegible] 19th March 1900, Amirta Lal Pandey executed a deed of conveyance, whereby he transferred his ancestral property to the defendants Nos 1 to 4, in satisfaction of certain debts incurred by him in 1892 and 1895 He was joined in this conveyance by the defendants Nos 5 to 7 On the 26th December 1900, Amirta Lal Pandey died, leaving [illegible]

HINDU LAW—JOINT FAMILY—*contd.*

the defendants Nos. 5 to 9 *pro formâ* defendants: *Held*, that when the grandfather of the plaintiffs migrated from Oudh to Bengal, the presumption was that he carried with him the laws and customs as to succession and family relations prevailing in the province from which he came. Such a presumption might, however, have been rebutted by proof that the family had adopted the law and usages of the place to which he had migrated. *Held*, also, that in 1890, by reason of his conversion to Christianity, the first plaintiff ceased to be a member of the joint Hindu family, but that thenceforward he continued to hold the ancestral property as joint owner, and was entitled to recover possession of one-seventh share of the property on the basis that in 1890, upon the dissolution of the family, he became entitled to such share: *Jalbhai Ardeshir Shet v. Louis Manoël, I. L. R. 19 Bom. 680*, and *Lastings v. Gonsalves, I. L. R. 23 Bom. 539*, distinguished. *Held*, further, that the second plaintiff, upon his conversion to Christianity in 1896, ceased to be a member of the joint family, and was not bound by the conveyance of the 19th March 1900, but that he was liable to satisfy the debts of his father incurred and charged upon the ancestral property prior to the date of his conversion: *Ram Prasad Singh* v. *Lakhpati Koer, I. L. R. 30 Calc. 231*, *Balabux* v. *Rukhmabai, I. L. R. 30 Calc. 725*, and *Balkishen Das* v. *Ram Narain Sahu, I. L. R. 30 Calc. 738*, distinguished. *Held*, further, that Amrita Lal Pandey was competent in 1900 to alienate the ancestral property in his hands, not merely in respect of his own interest, but also that of the third plaintiff. KULADA PRASAD PANDEY *v.* HARIPADA CHATTERJEE (1912) . . . . **I. L. R. 40 Calc. 407**

2. ——————— *Joint family —Allegation of separation in suit by some members for separate share—Expression of intention to hold share separately not proved—Right to mesne profits on separation—Exclusion from joint family, allegation of—Non-receipt of share of profits of joint property—Voluntary residence not with joint family—Refusal of allowance as being inadequate.* The appellant, a member of a joint undivided Hindu family brought a suit in 1905 against the respondents, the other members of the family, alleging a separation by him in 1901, when he had expressed his intention to hold his share separately, and claiming possession of his share, with mesne profits. *Held*, that what may amount to a separation, or what conduct on the part of some of the members may lead to separation of a joint undivided Hindu family, and convert a joint tenancy into a tenancy-in-common, must depend on the facts of each case. A definite and unambiguous indication by one member of intention to separate himself and to enjoy his share in severalty may amount to separation; but to have effect the intention must be unequivocal and clearly expressed. Separation from commensality does not as a necessary consequence effect a division [*Rewun Persad* v. *Radha Beeby, 4 Moo I. A. 137*]. A separation in mess and worship may be due to various causes, and yet the family may continue joint in estate. In this appeal it was *held* (affirming the decision of the Court of the Judicial Commissioner), that on the evidence in, and under the circumstances of, the case and the conduct of the party alleging division of the family there had been no separation in 1901, and the appellant was consequently not entitled to mesne profits on that ground. He also claimed mesne profits on the ground of exclusion from the joint family, as he had not since 1901 received any share of the profits of the joint property. *Held, that, although he had not received any of the* profits of the joint estate, the evidence was clear that the appellant was offered an allowance from the profits of the joint property which he refused to accept as being inadequate, and that would not amount to exclusion. SURAJ NARAIN *v.* IQBAL NARAIN (1912) . . . **I. L. R. 35 All. 80**

3. ——————— *Joint Hindu family—power of father to bind the family property—Further no power to revive time-barred debt. Held*, that the father and manager of a joint Hindu family cannot legally revive a time-barred debt and bind the family property to secure its payment. *Chandra Deo* v. *Mata Prasad, I. L. R. 31 All. 176*, and *Indar Singh* v. *Surja Singh 8 All. L. J. 1009*, followed. DALIP SINGH *v.* KUNDAN LAL (1913) **I. L. R. 35 All. 207**

4. ——————— *Mitakshara—Joint Hindu family—Liability of sons in respect of a mortgage executed by father—Exemption of son's interests —Subsequent suit against the sons—What plaintiff's are entitled to recover.* In 1892, a decree was passed on appeal for sale on a mortgage of joint family property against the father of the family. In 1896, the sons, who were not made parties to the original suit, obtained a decree exempting their shares in the family property. In 1897, the share of the father was sold and realized less than half the amount of the decree. In 1910, the mortgagees brought a suit against the sons to recover the balance of the mortgage debt after giving credit for the amount realized by sale in execution of the decree of 1892. *Held*, that the suit was not barred, but that the plaintiffs could only recover the unsatisfied portion of the decree of 1892 together with future interest as allowed by that decree. They could not treat the suit as an ordinary mortgage suit, merely giving credit for the amount realized under the decree of 1892, nor could they claim interest at the contractual rate on the unpaid amount of the decree. *Lachman Das* v. *Dalu, All. Weekly Notes (1900), 125*, followed. *Dharam Singh* v. *Angan Lal, I. L. R. 21 All. 301*, and *Ran Singh* v. *Sobha Ram, I. L. R. 29 All. 544*, referred to. JALESHAR RAI *v.* ANRUT RAI (1913) **I. L. R. 35 All. 302**

5. ——————— *Joint Hindu family—Execution of decree —Power of managing member to enter up satisfaction of decree on behalf of the family.* *Held*, that the managing member of a joint Hindu family can execute decrees on behalf of the family, and can receive payment and

HINDU LAW—JOINT FAMILY—*contd*

give good receipts on behalf of the family, which will be binding on the family *Hori Lal* v *Munman Kunwar, I L R 34 All 549*, followed *Ganga Dayal* v *Mani Ram, I L R 31 All 156*, distinguished ACHHAIBAR SINGH v RAM SARUP SAHU (1913) **I L R 35 All 380**

6 —————— *Joint Hindu family—Mortgage—Suit for cancellation of mort*

deceased brother joined as a co mortgagor In 1907 the mortgagors sued for cancellation of this deed but entered into a compromise with the mortgagee, upon which a decree was passed maintaining the mortgage, but in a modified form The mortgagee thereafter instituted a suit for enforcement of the mortgage as settled by the compromise decree *Held* that, in view of the fact that the courts below found that the compromise was genuine and for the benefit of the family, it was not open to the defendants to raise the question of the genuineness of the original mortgage, and that whether or not the original mortgage was a genuine transaction the compromise decree gave rise to a debt which was binding on the descendants of the original mortgagor *Madan Lal* v *Kishan Singh I L R 34 All 572*, referred to RAM KUBER PANDE v RAM DASI (1913) **I L R. 35 All 428**

7 —————— *Joint Hindu family—Mortgage—Mortgage by two brothers of undivided shares, each assenting to the other s mortgage—Partition—Entire mortgaged property falling to the share of one brother—Effect of partition on rights of mortgagee* Two brothers constituting a joint Hindu family jointly mortgaged in *1819* a ten biswa share in village Chauwar In 1881, in substitution for this mortgage, each brother mortgaged to the same mortgagee a five biswa undivided share in Chauwar, and each brother also signed the mortgage executed by the other In 1888 the family property was partitioned and the

he had taken in exchange therefor *Byjnath Lall* v *Ramoodeen Chowdry, L R 1 I A 106*, distinguished SUNDAR LAL v BRIJ LALL (1913) **I L R 35 All. 543**

8 —————— *Joint Hindu family—Presumptions as to property in the possession of members of a joint family* Property in the possession of a joint Hindu family should be presumed to be joint family property until the contrary is shown even though it may have been acquired in the name of a particular member of the family The fact that property stands in the individual name of one or other member of a joint

HINDU LAW—JOINT FAMILY—*contd*

Hindu family does not of itself give rise to the presumption that it is the separate property of that member *Gurumurthi Reddi* v *Gurummal, I L R 32 Mad 88 Shiv Gulam Singh v Baran Singh 1 B L R 164* and *Taruck Chandra Totadar v Joodheshteer Chunder Koondoo 19 W R 178* referred to *Ram Kishen Das* v *Tunda Mal, I L R 33 All 677*, discussed KUNDAN LAL v SHANKAR LAL (1913) **I L R 35 All. 564**

9 —————— *Joint Hindu family —Mortgage —Guardian ad litem—Suit on mortgage executed by father prior to birth of son—Father appointed son s guardian ad litem* *Held*, that, inasmuch as an after born son cannot in a suit on a mortgage made by his father set up the defence of the immoral nature of the debt on account of which mortgage was executed it cannot be said that the appointment of the father as guardian *ad litem* in such suit would be necessarily prejudicial to the interests of the son NARAIN DAS v HAR DAYAL (1913) **I. L. R 35 All 571**

10 —————— *Joint Hindu family—Trading business belonging to joint Hindu family—Position of an infant member of a joint Hindu family with regard to business contracts—Joinder of parties—Necessary parties to a suit on a*

ness debts LALJI NENSEY v KESHOWJI PUNJA (1912) **I L R 37 Bom 340**

11 —————— *Co owners treating near relations as joint owners of property—Title if passes without registered document* Transfer by way of gift is not under Hindu Law the only means of creating title apart from inheritance and succession If the persons actually entitled to a property agree to treat a near relation as a co sharer out of affection and abandon their claim to an exclusive right they may do so without a registered deed Where therefore, upon the death of a Hindu widow, the actual reversionary heirs of her husband treated two other relations, one degree lower in descent, as co sharers for a shorter period than that which would give them title by adverse possession *Held*, that the purchasers in execution of the interest of one of these persons became entitled by their purchase to the share which he had been enjoying jointly

HINDU LAW—JOINT FAMILY—*contd.*

with the actual reversioners. GIRHI RANI MISRANI v. CHANDRA LAL KANTH (1912)

17 C. W. N. 62

12. ——————— *Father's debt, son's liability to pay, Mitakshara—Proof of immoral habits if enough.* A sale of joint family property for a father's debt cannot, under the Mitakshara school of Hindu Law, be avoided by the sons merely proving that the father was a man of immoral habits. They must prove that the particular debt was incurred for an immoral purpose. SRI NARAIN v. LALA RAGHUBANS RAI (1912) . . . . **17 C. W. N. 124**

13. ——————— *Father, alienation by, if and when binds sons—Mitakshara—Afterborn son if precluded from questioning alienation—Mortgage if distinguishable from sale.* It is well-settled that where a Mitakshara father has made an alienation without necessity and without the consent of sons then living, it would not only be invalid against them but also against any son born before they had ratified the transaction, and no consent given by them after his birth would render it binding upon him. *Hurodoot* v. *Beer Narayan, 11 W. R. 48, Bunwari Lal* v. *Daya Sunkar 13 C. W. N. 815,* relied on. The rule applies with greater force in the case of a mortgage than in the case of an absolute alienation. *Kissen Prasad* v. *Tippan Prasad, I. L. R. 34 Calc. 735,* referred to. HAZARI MALL BABU v. ABANINATH ADHURJYA (1912) . . . . **17 C. W. N. 280**

14. ——————— *Father's debt—Mortgage by father alleged by sons to be for improper purposes—Onus—Issue—Pleadings.* It is well-settled that where a particular debt contracted by a Mitakshara father is alleged by the sons to have been contracted for an illegal or immoral purpose, the burden is on the sons to prove that it was so contracted and such burden is not discharged by proof that the father lived an extravagant or immoral life. There must be direct connection established between the particular debt and immorality. Where the parties without objection went into evidence on the question of the immoral character of the debt upon an issue framed as follows: "Were the mortgage bonds *bonâ fide* transactions and executed for legal necessity," and there was no suggestion that either party was misled by the terms of the issue : *Held,* that the Court would not under such circumstances remand the case for trial upon an issue more precisely framed. *Vishnu* v. *Ganesh, I. L. R. 21 Bom. 325, Saheb Prahlad Singh* v. *Broughton, 24 W. R. 275,* referred to. HAZARI MALL BABU v. ABANINATH ADHURJYA (1912) . **17 C. W. N. 280**

15. ——————— *Joint or self acquired property—Self acquisition of coparcener thrown into common stock, if may be disposed of by will—Consent of other coparceners, if necessary.* Where the head of a joint Mitakshara Hindu family kept one account of the income of his ancestral and self-acquired property and used to treat the income of both kinds of property as one

HINDU LAW—JOINT FAMILY—*concld.*

amalgamated fund : *Held,* that the property which had been acquired by him as his self-acquired property became the property of the joint family, which he was not competent to dispose of by will without the consent of his co-parceners. INDAR SAHAI v. SHIAM BAHADUR (1912)

17 C. W. N. 509

16. ——————— *Father, mortgage of immoveable property by—Mitakshara—Suit against sons—Limitation—Limitation Act (XV of 1877), Sch. I, Art. 132.* A suit to enforce a mortgage of ancestral property executed by a Mitakshara father against his sons, is a suit to enforce payment of money charged upon immoveable property and is governed by Art. 132 of Sch. II of the Limitation Act of 1877. *Maheshur Dutt* v. *Kishen Singh I. L. R. 34 Calc. 184; 11 C. W. N. 294,* followed. *Lachmun* v. *Giridhar. I. L. R. 5 Calc. 855,* and *Surja prasad* v. *Golab Chand, I. L. R. 27 Calc. 762,* not followed. *Bhagabat Prosad* v. *Suba Lal. 7 C. L. J. 195,* referred to. SHEO NARAIN RAY v. MOKSHODA DAS MITTRA (1913) . . . . **17 C. W. N. 1022**

See also BISSONATH PROSAD MAHTA v. BRINDESRI PROSAD SINGH (1912)

17 C. W. N. 1025n

17. ——————— Separation—*Separate entries in revenue record in the name of brothers and brother's widow—Separate mortgages by some brothers of respective shares—Presumption as to separation or joint possession —Plaintiffs not giving evidence, effect of—Onus and rebutting of inference from documentary evidence.* Separate entries in the revenue records of names of members of a Mitakshara Hindu family in regard to specified areas, standing by themselves, may be inconclusive to rebut the presumption of Hindu law relating to jointness or to prove separate possession when in its inception the family was admittedly joint, but where half-brothers claimed a deceased brother's share in certain villages and lands against his widow whose name as also those of the half, brothers had been separately recorded in the revenue records and it was in evidence that the half-brothers had executed separate mortgages in respect of their respective shares, and they did not come into the witness box to show that these transactions, although separate, were consistent with jointness : *Held,* that the acts of the brothers were only consistent with the hypothesis of separation. RAM SINGH v. TURSA KUNWAR (1913)

17 C. W. N. 1085

HINDU LAW—MARRIAGE.

1. ——————— *Marriage of a Hindu girl without force or fraud but without consent of legal guardians—Maxim "factum valet."* The marriage of a Hindu girl of some 16 years of age was effected by the maternal uncle of the girl. There was no evidence of force or fraud ; but the marriage was against the wishes of the paternal relatives of the girl, who desired to make a profit

HINDU LAW—MARRIAGE—*concld*

by marrying her to a rich but one eyed man called Tulshi *Held*, that the case was one to which the

v *Budhia I L R 22 Bom 812*, and *Khushalchand Lalchand* v *Bai Mani I L R 11 Bom 247*, referred to KASTURI *v* CHIRANJI LAL (1913)
I L R 35 All 265

2 ———————— *Koli caste—Marriage between a divorced woman and a man—Approved form of marriage—Asura form of marriage —Test of asura form* A marriage between a man and a divorced woman belonging to the Koli caste is not to be regarded as being an unapproved form of marriage under Hindu Law The essence of the *asura* form of marriage is that a bride price should be paid to the father or other relative who gives away the bride in consideration of the marriage HIRA *v* HANSJI PEMA (1912)
I L R 37 Bom 295

HINDU LAW—PARTITION

1. ———————— *Requisites for Partition—Agreement to hold property in certain specific and defined shares, effect of—Re union, failure to prove as alleged* The members of a joint Hindu family came to the following agreement —

Now we have already come to terms and according to the shares given below we have been in possession and enjoyment of our respective shares As regards it we have with our mutual consent entered into an agreement according to the terms given below The same share in the property which is in the possession of a particular person as given below shall be considered to be the property of that very person who is in possession thereof If any of us brings any suit in the Civil or Revenue Court to the effect that his share is less or he is a loser it shall be considered to be false in every Court By virtue of this agreement no person shall be competent to bring any claim in any Court in respect of any portion of the property other than the property detailed below Then followed a specification of the villages belonging to the family, and the shares in which those villages were thereafter to be held From that time the property had been entered in the register in accordance with the arrangement contained in

as a partition of shares, and the family thenceforth ceased to be joint in accordance with the principle laid down in *Apponier* v *Rama Subba Aiyan, 11 Moo I A 75, Balkishen Das* v *Ram Narain Sahu, I L R 30 Calc 738, L R 30 I A 139* and *Parbati* v *Naunihal Singh, I L R 31 All 412, L R 36 I A 71* There was no re union That was a question of fact, and there was no evidence to show

HINDU LAW—PARTITION—*contd*

that any of the members of the family re united, or even contemplated re union RAGHUBIR SINGH *v* MOTI KUNWAR (1912) **I L R 35 All 41**

2 ———————— *Requisites for partition—Partition created by so called will in life time of father dividing family property among his sons and taking no share himself—Double share to eldest son—Unequal partition under alleged custom—Provision for forfeiture on mismanagement or bad behaviour—Conduct of parties after execution of document of partition* By a document called a Will dated the 26th of November, 1895 the father and head of a Hindu joint family governed by the Mitakshara law recorded a division of the ancestral family property amongst his three sons (giving himself no share but allotting a double share to his eldest son) The document recited that my three sons are at present fully qualified to conduct the business Therefore in order to avoid a dispute after my death I have at present, while in a sound state of body and mind and of my own free will and accord divided the property among my sons, heirs as follows Then followed the details of the division There was provision that, If I at any time come back from pilgrimage

the three sons were put in separate possession of the estate in the beginning of the year 1303 Fasli (September 1885) I have no other heir having a right besides those mentioned in this will I have therefore executed this will in order that it may serve as evidence Mutations of the various shares were subsequently made into the names of those to whom they were separately allotted, and the evidence showed that the division had been assented to acquiesced in and acted upon by the sons up to 1905 In a suit brought in September 1905, four years after the father s death, by the two younger sons for partition of the property which they alleged to be joint and undivided and of which they claimed to be entitled to two one third shares *Held* (reversing the decision of the High Court) that the document of the 26th of November 1895, was not a will but was intended to operate from its date and was in fact a family arrangement contemporaneously made and acted upon by all parties the effect of which was, under the circumstances of the case to create a partition of the joint ancestral property There was nothing in the fact that the document was called a will doubtedly made in fact, and which was acted upon for ten years without any dispute or misunderstanding as to the respective rights of the parties under it *Held*, also that the provision in the will giving the father power to cancel it in certain events, evidenced a contractual condition which the sons accepted in order to obtain the partition, which gave them immediate possession of the property, and viewed thus the contractual acceptance of a power of forfeiture in case of bad behaviour would not be sufficient to prevent

HINDU LAW—PARTITION—*concld.*

the partition operating *in praesenti.* BRIJRAJ SINGH *v.* SHEODAN SINGH (1913) I. L. R. 35 All. 337

HINDU LAW—PROSTITUTE'S PROPERTY.

———————— *Stridhan—Prostitute's property, succession to.* The mere fact that a Hindu woman has adopted the life of a prostitute does not sever the tie which connects her to her kindred by blood, and, consequently, her *stridhan* property passes upon her death, in the absence of nearer heirs, to her brother's son as an heir under the Bengal school of Hindu law. *Tara Munnee Dossea* v. *Motee Buneanee, 7 Mac. Sel. Rep. 325 ; 8 I. D. (O. S.) 247, Ramnath Talapattro* v. *Durga Sundri Debi, I. L. R. 4 Calc. 550, In the goods of Kamineymoney Bewah, I. L. R. 21 Calc. 697, Ramananda* v. *Raikishori Barmani, I. L. R. 22 Calc. 347, Sarna Moyee Bewa* v. *Secretary of State for India, I. L. R. 25 Calc. 254,* and *Sundari Letani* v. *Pitambari Letani, I. L. R. 32 Calc. 871,* overruled so far as they hold that tie of blood is destroyed by unchastity or, in the case of a Hindu woman, by her adopting the life of a prostitute. *Bisheshur* v. *Mata Gholam, 2 All. H. C. 300, Musammat Ganga Jati* v. *Ghasita, I. L. R. 1 All. 46, Advyapa v. Rudrava, I. L. R. 4 Bom. 104, Kojiyadu* v. *Lakhshmi, I. L. R. 5 Mad. 149, Subbaraya Pillai* v. *Ramasami Pillai, I. L. R. 23 Mad. 171, Bhutnath Mondol* v. *Secretary of State for India, 10 C. W. N. 1085, Sundari Dosee* v. *Nemye Charan Daw, 6 C. L. J. 372,* and *Tripura Charan Bannerjee* v. *Harimati Dassi, I. L. R. 38 Calc. 493,* approved. *Sivasangu* v. *Minal, I. L. R. 12 Mad. 277,* and *Narasanna* v. *Gangu, I. L. R. 13 Mad. 133,* distinguished and dissented from. HIRALAL SINGHA v. TRIPURA CHARAN RAY (1913) I. L. R. 40 Calc. 650

HINDU LAW—SELF-ACQUIRED PROPERTY.

———————— *Ancestral or self-acquired property—Mitakshara School—Gift by owner of impartible estate of portion of property to younger son for maintenance of himself and his descendants—Property if ancestral or self-acquired in grantees hands.* Where a Hindu instead of allowing his self-acquired or separate property to go by descent, makes a gift of it to his son or bequeaths it to him by will such property has been treated by the Calcutta High Court as ancestral property in the hands of the son as if he had inherited it from his father. *Muddun Gopal* v. *Ram Buksh 6 W. R. 71,* followed. Authorities reviewed and the views taken by the other High Courts discussed. The decision of the Privy Council in *Sartaj Kuari* v. *Deoraj Kuari, L. R. 15 I. A. 51 ; I. L. R. 10 All. 272,* and *Sri Raja Rao Venkata* v. *Court of Wards L. R. 26 I A. 83 ; I. L. R. 22 Mad. 383,* recognise that the holder of an impartible estate has the right to alienate the estate without the consent of the next taker, but they do not by necessary implication involve the conclusion that if the holder of the impartible estate by a testamentary disposition or otherwise carves out a portion thereof and grants it to his younger son for the maintenance

HINDU LAW—SELF-ACQUIRED PROPERTY—*concld.*

of the son and his descendants, such property becomes the self-acquired property of the grantee, liable to be capriciously alienated by him to the detriment of the grandsons of the grantor. Such property has all the incidents of ancestral property in the grantees' hands. *Durga Dutt* v. *Rameshwar, I. L R. 36 Calc. 943 ; 13 C. W. N. 1013,* referred to. HAZARI MALL BABU *v.* ABANINATH ADHURJYA (1912) . . . . . 17 C. W. N. 280

HINDU LAW—STRIDHAN.

1. ———————— *Inheritance—Stridhan—Half-sister's son of Hindu widow—Probate, application for—Daughter's son of the great-grandson of the great-great-grandfather of the testatrix' husband whether preferential heir to half-sister's son.* Under the Dayabhaga School of Hindu law a half-sister's son of a widow is heir to her *stridhan* property, in preference to the daughter's son of the great-grandson of the great-great-grandfather of her husband, and that therefore the latter has no *locus standi* to oppose an application for probate by the former, of a will alleged to have been executed by the said widow in regard to such property. *Dasharahi Kundu* v. *Bipin Behary Kundu, I. L. R. 32 Calc. 261,* and *Bholanath Roy* v. *Rakhal Dass Mukharji, I. L. R. 11 Calc. 69,* referred to. *Chatoo Kurmi* v. *Rajaram Tewari, 11 C. L. J. 124,* distinguished. SHASHI BHUSHAN LAHIRI *v.* RAJENDRA NATH JOARDAR (1912) . . . . I. L. R. 40 Calc. 82

2. ———————— *—Prostitute's property, succession to.* The mere fact that a Hindu woman has adopted the life of a prostitute does not sever the tie which connects her to her kindred by blood ; and, consequently, her *stridhan* property passes, upon her death, in the absence of nearer heirs, to her brother's son as an heir under the Bengal school of Hindu law. *Tara Munnee Dossea v. Motee Buneanee, 7 Mac. Sel. Rep. 325 ; 8 I. D. (O. S.) 247, Ramnath Talapattro* v. *Durga Sundri Devi, I. L. R. 4 Calc. 550, In the goods of Kamineymoney Bewah, I. L. R. 21 Calc. 697, Ramananda* v. *Raikishori Barmani, I. L. R. 22 Calc. 347, Sarna Moyee Bewa* v. *Secretary of State for India, I. L. R. 25 Calc. 254,* and *Sundari Letani* v. *Pitambari Letani, I. L. R. 32 Calc. 871,* overruled so far as they hold that tie of blood is destroyed by unchastity or, in the case of a Hindu woman, by her adopting the life of a prostitute. *Bisheshur* v. *Mata Gholam 2 All. H. C. 300, Musammat Ganga Jati v. Ghasita, I. L. R. 1 All. 46, Advyapa v. Rudrava, I. L. R. 4 Bom. 104, Kojiyadu v. Lakshmi, I. L. R. 5 Mad. 149, Subbaraya Pillai v. Ramasami Pillai, I. L. R. 23 Mad. 171, Bhutnath Mondol v. Secretary of State for India, 10 C. W. N. 1085, Sundari Dasse* v. *Nemye Charan Daw, 6 C. L. J. 372,* and *Tripura Charan Bannerjee v. Harimati Dassi, I. L. R. 38 Calc. 493,* approved. *Sivasangu* v. *Minal, I. L. R. 12 Mad. 277,* and *Narasanna* v. *Ganga, I. L. R. 13 Mad. 133,* distinguished and dissented from. HIRALAL SINGHA *v.* TRIPURA CHARAN RAY (1913) I. L. R. 40 Calc. 650

HINDU LAW—STRIDHAN—*concld*

3 ———————— —*Succession—(Mitakshara)—Preference of co wife s daughter to sapindas of husband* Under the Mitakshara law of inheritance, the daughter of a co wife of a deceased woman married in one of the approved forms is entitled to succeed to her stridhanam property in preference to the sapindas of her hus band such as his father s brother s son *Placitum* 11 of section XI of Chapter II Mitakshara, ap plied Colebrooke s translation of sapinda in that *placitum* as kinsmen allied by funeral ob lations is incorrect the correct meaning being 'kinsmen llied by affinity or ' persons llied to each other by possession of particles of the same body According to the above text the stri dhanam property of a woman married according to an orthodox form, who has left no issue will devolve on her husband, and on failure of the hus band the property will go to his sapindas in the order laid down in the Mitakshara with reference to the succession to the property of a male *Venkatasubramaniam Chetti* v *Thayaramma I L R 21 Mal, 263 Gojabai* v *Shrimant Shahaj rao Maloji Raje Bhosle, I L R 17 Bom 114, 117, Jagannath Prosad Gupta* v *Ranjit Singh I L R 25 Calc 354 367, Krishnai* v *Sripati I L R 30 Bom 333, Bai Kesserbai* v *Hunsraj Morarji I L R 30 Bom 31 Thakoor Deyhee* v *Rai Bauk Ram 11 Moo I A 139, 175* and *Champat* v *Shiba, I L R 8 All 393* applied West and Buhler, p 518 T Kri shnasami Aiyar s ranslation of Srimiti Chandrika, Chapter IX section III verse 83 Golab Chandra Sircar Sastri s Hindu Law 4th edition, p 461, and Bhattacharya s Hindu Law, p 580, referred to NANJA PILLAI *v* SIVABAGYATHACHI (1913)
I L R 36 Mad 116

HINDU LAW—WIDOW

See RES JUDICATA
I L R 37 Bom 172

See HINDU WIDOW

1 ———————— *Mortgage by widow of part of the estate—Legal necessity—Presumption—Reversioner* Alienation by way of mortgage by a Hindu widow, as heiress of a por tion of the estate of her deceased husband without proof either of legal necessity or of reasonable enquiry and honest belief as to its existence but with the consent of the next reversioner for the time being will be valid and binding on the actual reversioner, if the presumption of legal necessity or of reasonable enquiry and honest belief raised by such consent is not rebutted by more cogent proof *Nobokishore Sarma Roy* v *Hari Nath Sarma Roy I L R 10 Calc 1102* considered *Bajrangi Singh* v *Manokarnika Baksh Singh I L R 30 All 1 L R 35 I A 1*, referred to DEBI PROSAD CHOWDHURY *v* GOLAP BHAGAT (1913)
I L R 40 Calc 721

2 ———————— *Hindu widow—Compromise followed by an award settling disputes as to the property of various members of the family—Effect of such award on reversionary interests* Where the widow of one and the son of the other of two brothers, Hindus separated in estate, entered into a compromise, which was found to be reason able in its nature, concerning the partition of the property of the two brothers, and an award was made on the basis of such compromise, it was *held* that it was not open to the reversioner to dis pute the validity of the compromise and award, specially when a considerable time had elapsed and most of the property had changed hands mean while *Khunni Lal* v *Gobind Krishna Narain, I L R 33 All 356* and *Mohan Lal* v *Chuttan Singh 10 All L J 101*, followed BIHARI LAL *v* DAUD HUSSAIN (1913) **I L R 35 All 240**

3 ———————— *Hindu widow—Powers of alienation possessed by a Hindu widow in respect of the property of her husband—Transfer of debt secured by a mortgage* A Hindu widow in possession as such of property which had been the property of her husband in his life time can always alienate her life interest in such property and a transfer by her of the corpus of the property without legal necessity and not for a pious purpose, is not void but only voidable at the instance of the reversioners A Hindu widow without legal necessity transferred a mortgage debt and the security therefor which had been the property of her late husband to *D* who thereafter sued to recover the debt by sale of the mortgaged property *Held* that the transferee acquired all

34 Calc 329 referred to DURGA KUNWAR *v* MATU MAL (1913) **I L R 35 All 311**

4. ———————— *Suit for declaration that mortgage by widow did not effect plaintiff's reversionery rights—Plaintiffs not nearest reversioners—Pleadings* Where plaintiffs sued as next reversioners for a declaration that a mortgage executed by a Hindu widow was not binding on them and it was found that as a matter of fact even the nearest of the plaintiffs could only suc ceed to the estate if four males and one female died in his life time *Held* that the plaintiffs ought not to have a decree MEGHU RAI *v* RAM KHELAWAN RAI (1913) **I L R 35 All 326**

5 ———————— *Caste Disabilities Removal Act s 1—Hindu Widows Remarriage Act (XV of 1856) s 2—Hindu widow—Conversion and subsequent remarriage—Widow's estate not divested—Hindu law* The widow of a separated Hindu became a convert to Mahomedanism and married a Mahomedan *Held* that the widow did not thereby lose her interest in the property of her late husband in view of the provisions of Act XXI of 1850 nor did section 2 of the Act XV of 1856 affect the situation inasmuch as that section applied to *Hindu* widows only *Khunni Lal* v *Gobind Krishna Narain, I L R 33 All 356*, followed *Matungini Gupta* v *Ram Rutton Roy*,

HINDU LAW—WIDOW—*contd.*

I. L. R. 12 Calc. 289, dissented from. ABDUL AZIZ KHAN v. NIRMA (1913)

I. L. R. 35 All. 466

6. ———— *Hindu widow—Investments by widow from income of husband's estate—Whether or not such investments become accretions to the husband's estate.* Where immovable property is purchased by a Hindu widow in possession as such of the estate of her late husband out of the income of that estate, such property does not necessarily become an accretion to the husband's estate. The widow has full power to dispose of it during her life time, and it is only when she manifests during her lifetime a clear intention to treat it as an accretion to her husband's estate, or allows it at her death to remain undisposed of, that such property will become part of that estate. WAHID ALI KHAN v. TORI RAM (1913)

I. L. R. 35 All. 551

7. ———— *Widow's estate—Nature of interest arising out of contract with surviving coparceners.* P and C were undivided brothers of a joint Hindu family. P died. C entered into an agreement with L, the widow of P, whereby L was to receive a younger son of C (if such should be born) in adoption or in default a half share in the family properties. No adoption took place. C died leaving his widow R. R and L effected a partition of the properties in equal shares. The plaintiff was a daughter of P by another wife. *Held*, that the half share taken by L was a widow's interest and that it would pass on her death to her husband's reversioners and the plaintiff being the nearest reversioner was entitled to succeed. A woman's estate can be obtained by a Hindu female not only by inheritance but also by contract of parties, by a grant, or by prescription. VENGAMMA v. CHELLAMAYYA (1913)

I. L. R. 36 Mad. 484

HINDU LAW—WILL.

1. ———— *Construction of will—Period of distribution of property bequeathed—Succession Act (X of 1865), s. 111—Hindu Wills Act (XXI of 1870)—Absolute gift to son on attaining majority—Bequest contingent on son's death which did not happen till after period of distribution.* The right of the appellant to succeed to the *shebaitship* of certain *debutter* properties depended on the construction of his grandfather's will, and on the nature of the right which his father took in those properties. After declaring the properties to be *debutter* for the maintenance of the family idol, the testator in his will stated that "my present begotten son" (the appellant's father) "will be *shebait* for performance of the ceremonies." And after making provision for his own death during the minority of his son, in which case his widow was to be the *shebait* as his son's guardian, the testator continued, "and my son on attaining majority will personally conduct the work of the *sheba*. God forbid, if during my life or after my death, my said son dies, then my widow will be the *shebait*, and after her my daughters by her" (the respondents) "will be *shebaits* . . . . . Moreover, for carrying out the directions under this will until my minor begotten son comes of age, my wife" (and two male persons named), "will be executors . . . . and on my said begotten son attaining majority the said executors will be discharged, and the said son by continuing in his present faith will go on performing the *sheba*, etc., of the said idol": *Held* (reversing the decision of the High Court), that, on the true construction of the will, there was an absolute gift of the *shebaitship* to the appellant's father on his attaining his majority, and it was not cut down by anything that followed. There were provisions in case of his death as a minor, but no cutting down of the absolute gift to him. The appellant therefore, and not the respondents, succeeded on the death of the testator's son, who had attained his majority and held the *shebaitship* until his death. TRIPURARI PAL v. JAGAT TARINI DASI (1912) . . **I. L. R. 40 Calc. 274**

2. ———— *Testator's direction to his brother to get his daughters married—Betrothal by the brother—Marriage of the daughter by her mother and maternal uncle with another person—Suit by the brother to recover damages which he had to pay to the betrothed husband for breach of contract—The right of the testator's brother to give in marriage no more than the right under the Hindu law and subject to the limitations of that law—Right of the mother as legal guardian.* A testator in his will directed that his brother should get his minor daughters married with the testator's money. The brother accordingly got one of the daughters betrothed to H. Subsequently the girl's mother and maternal uncle got the girl married to C. The testator's brother, thereupon, brought a suit against the mother, maternal uncle and C to recover damages which he had to pay to H for breach of contract. *Held*, that the suit was not maintainable. The plaintiff's right under his brother's will was not absolute and exclusive. The right was no more than the right under the Hindu law, and subject to the limitations under that law. According to the next of *Yajnyavalkya* the persons entitled to give a girl in marriage were "the father, paternal grandfather, brother, kinsmen (*sakulya*) and mother" in the order stated. The text only dealt with the bare right to give a girl in marriage. It did not deprive the mother of her right of legal guardianship but only specified who could make a gift in marriage. The paternal male relations of the girl were placed above the mother for the purpose of the gift, because women were dependent and they could not perform certain ceremonies essential to or usual in a marriage. The text did not say that the mother was to have no voice at all and might be altogether set at naught where there were paternal male relations of the girl competent to give her in marriage. BAI RAMKORE v. JAMNADAS MULCHAND (1912) **I. L. R. 37 Bom. 18**

3. ———— *Life-estate to widow, remainder to another upon condition to be*

HINDU LAW—WILL—*contd*

fulfilled —Sale by widow with concurrence of latter before condition fulfilled—Condition made impossible of performance—Ultimate conditional bequests in favour of specified relatives—Heir's right to succeed in the absence of proof that no legatee can take—Bequest to husband of unmarried son's daughter married in testator's life time, if valid A testator by his will conferred a life estate in most of his properties to his widow *B* and provided that if *B* adopted a son the said properties would on her death pass to him, but that if no son was adopted the properties would pass absolutely to *N* provided he lived in the testator's ancestral house, but that if *N* or his son or other descendant failed to live in the ancestral house the properties would pass to other specified relatives of the deceased, subject to the like condition and on the failure of any such relatives to fulfil such condition to any agnate and, failing agnates, to any Brahmin who would live in his ancestal house No son was adopted and in *B's* life time *N* joined *B* to sell the ancestral house of the testator to a stranger *Held,* that the condition of residence in the house was not invalid so far as it affected *N* although it was attached to the gift of an absolute estate That *N's* interest being a contingent one which fell into possession on the death of the widow the condition or residence had to be satisfied at the date of the widow's death, and that *N* not having lived there at that time and having made it impossible for him to live there by joining in the sale of the house, he was not qualified to take under the will *Held,* that although the ultimate gifts over to agnates and to a Brahmin might be invalid for uncertainty, the other intermediate gifts were valid and in the absence of proof that there was no other person qualified to take under the succeeding clauses of the will upon *N's* failure, the plaintiffs who claimed as heirs could not recover A bequest by a Hindu in favour of the husband of a son's daughter unmarried at the date of the will but married in the testator's life time would be valid SHYAMA CHARAN BHUTTACHARYA *v* SARUP CHANDRA SEN (1912) **17 C W. N 39**

4 ———————— *Perpetuities, rule against—Hindu Wills Act (XXI of 1870), ss 2, 3—Indian Succession Act (X of 1865), ss 101, 102—Gift to grandsons after all of them have attained majority, if valid—Primary and secondary intention—Gift, if may be sustained as to grandsons in existence at testator's death* Upon the construction of a will whereby a Hindu testator directed his executor to divide his residuary estate "when my grandsons may attain their age" into five shares (he having had five sons) and "give away the same to their respective sons, that is to say my grandsons," the High Court had *held* that the distribution was to take place only after all the sons who might be born to the sons of the testator should have attained their majority, and that such a disposition was invalid under s 101 read with s 102 of the Indian Succession Act which by s 2 of the Hindu Wills Act are applicable to Hindu wills, that s 3 of the Hindu Wills Act, although it might have the effect of invalidating a disposition which is valid under s 101 of the Succession Act, cannot have the effect of validating a disposition which is invalid under that section, that the disposition would be invalid under s 101 read with s 102 even if the grandsons referred to in the will meant grandsons who were in existence at the testator's death, that the disposition should not be given effect to in favour of the three grandsons who were in existence at the testator's death on the assumption of a supposed secondary intention on the part of the testator absolutely inconsistent with his intentions as expressed in the will, and that as regards the subject matter of this disposition there was an intestacy Appeal from this decision was dismissed by the Judicial Committee P V SUBRAMANIA PILLAI *v* P V MURUGESA PILLAI (1912) **17 C. W. N. 488**

HINDU LAW—WOMAN'S STATE

1 ———————— *Alienation by Hindu mother—Property inherited from son—Legal necessity—Spiritual benefit—Installation of idol and endowment of temple—Bonâ fide dedication—Disproportion between property dedicated and cost*

husband The installation of an idol and the endowment of its temple do not come within the category of acts which conduce to the spiritual benefit of the deceased husband The mother's power of promoting the spiritual benefit of the son whose property she inherits being less than that of a widow to promote the spiritual welfare of her husband, the power of the former to alienate property so inherited for the purpose of installing an idol and endowing its temple may be less but is certainly not greater than the power of the widow to alienate her husband's property for a similar purpose In the absence of authority from her husband, dedication of property by a widow for religious purposes conduces to her own spiritual benefit only She cannot, as heiress to her son, alienate property inherited from him for her own spiritual benefit *Held,* on the evidence, that a deed of endowment in favour of family idols did not represent a *bona fide* dedication, regard being had, amongst other circumstances, to the great

Masulipatam v *Cavelly Venkata Narayanappa, 8 Moo I A 500, Lukhi Narain* v *Kubali, Borradaile's Rep 612, Ram Kawal* v *Ram Kishore, I L R 22 Calc 506,* referred to HARMANAGE NARAIN SINGH *v* RAM GOPAL ACHARI (1913) **17 C W. N. 728**

2 ———————— *Sale of portion with consent of presumptive reversioner, if passes absolute title—Presumption of propriety* The mere assent of the immediate reversioner to a sale by a

HINDU LAW—WOMAN'S STATE—*concld.*

Hindu female of a portion of an estate inherited by her, is not sufficient to confer an absolute title on the alienee. Such assent merely raises a presumption of the propriety of the transaction. *Debi Prosad* v. *Golab Bhagut, 17 C. W. N. 701 : 17 C. L. J. 499,* followed. *Nabo Kishore Sarma* v. *Hari Nath Sarma, I. L. R. 10 Calc. 1102,* referred to. *Pulin Chandra* v. *Bolai Mundal, I. L. R. 35 Calc. 939 : 12 C. W. N. 837,* overruled. GOPESHWAR MISRA *v.* DURGAMANI BAISHNABI (1913)

17 C. W. N. 1062

HINDU WIDOW.

See HINDU LAW—WIDOW.

See HINDU LAW—WOMAN'S ESTATE.

See SUCCESSION CERTIFICATE ACT (VII OF 1889), s. 9. **I. L. R. 35 All. 249**

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), ss. 107, 111.
I. L. R. 35 All. 527

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), ss. 107, 111, 112.
I. L. R. 35 All. 548

1. ———————— *Alienation—Setting aside alienation—Compensation to defendant for improvements—Evidence of relationship—Statement in will of widow—Conjectural suggestions as to will in argument in lieu of evidence—Suggestions never made in cross-examination of writer of will.* The respondent on the death of a Hindu widow brought a suit as the next heir of her husband to set aside an alienation, made by the widow in favour of the appellant, of property consisting of a house and compound at Delhi. The respondent who was the son of the daughter of the husband by a former wife (though this was denied by the appellant), produced a will made by the widow five years before the suit, in which she stated "I have no issue or any near relative. Mathu Mal (the respondent) is related to me as a daughter's son (*rishte men nawasa*) and Khairati Lal as my husband's younger brother. These are my relatives on my husband's side." The oral evidence as to the respondent's title was found by their Lordships to be meagre and conflicting. *Held* (affirming the decision of the Chief Court), that the statement in the will was, under the circumstances, conclusive of the respondent's relationship. The widow was the proper person to make such a statement of fact, which was within the scope of her own knowledge; she put forward the respondent in the will as the first person in the order of choice for the performance of the funeral ceremonies; her statement was corroborated by the other relative mentioned in the will, who was a witness in the case, and whose evidence on the matter was against his own interest, and the statement was uncontradicted by any reliable evidence. Mere conjectural suggestions made in argument that the will had been executed for the purpose of supporting a future claim to be made by the respondent, could not be entertained by their Lordships in lieu of evidence, especially when the writer

HINDU WIDOW—*concld.*

of the will was himself a witness in the case and no such conjectural considerations were suggested to him in cross-examination. In case the respondent succeeding, the appellant claimed the value of improvements made by him to the property while he was in possession of it, which included a temple (Rs. 2, 700), a well (Rs. 300), an upper storey to the house (Rs. 2,500), and repairs to the house (Rs. 1,500), the whole amounting to Rs. 7,000. *Held* (affirming the decision of the Chief Court and for the reasons given by it), that Rs. 1,400, which represented half the expenditure by the appellant, on the well and the upper storey to the house, should be allowed as compensation for the improvements. The real question was, had they enhanced the market value of the property ? It was doubtful whether the erection of the temple had done so, and it had not been contended that it had. KIDAR NATH *v.* MATHU MAL (1913)

I. L. R. 40 Calc. 555

2. ———— ———— *Decree for rent against, if can be executed against her husband's estate in the hands of the, reversioner—Widow described in decree as administratrix.* The mere fact that the judgment-debtor is described in the decree as administratrix is not conclusive that it binds the estate. A decree obtained against a Hindu widow for rent of a tenure held by her as her husband's heir, is a personal decree and cannot be executed against the estate of her husband in the hands of the reversionary heir after her death. *Kristo Gobindo* v. *Hem Chandra, I. L. R. 16 Calc. 511,* and *Brojo Lal* v. *Jibon Krisana, I. L. R. 26 Calc. 285,* followed. Although where a decree has been obtained upon a fair trial in a suit against a Hindu widow that decree is effectual and operative as against the reversionary heir unless the decree can be successfully impeached on some special ground, such decree operates as *res judicata* only in respect of questions which could arise in the litigation and were tried by the Court. *Radha Kishen* v. *Nourtan Lal, 6 C. L. J. 490, 528,* referred to. BIRESHUR DAS DEY *v.* KAMAL KUMAR DUTT (1912)

17 C. W. N. 337

HINDU WIDOWS' REMARRIAGE ACT (XV OF 1856).

———— s. 2—

See HINDU LAW—WIDOW.
I. L. R. 35 All. 466

HINDU WILLS ACT (XXI OF 1870).

See HINDU LAW—WILL
I. L. R. 40 Calc. 274

HOMESTEAD LAND.

See ADVERSE POSSESSION
I. L. R. 40 Calc. 173

See JURISDICTION OF CIVIL COURT
I. L. R. 40 Calc. 402

HOUSE-BREAKING.

See PENAL CODE (ACT XLV OF 1860), ss. 457, 511 **I. L. R. 37 Bom. 553**

HUNTER'S STATISTICAL ACCOUNTS.

——— *Admissibility in private litigation* Reference cannot legitimately be made to statements in Hunter's Statistical Accounts for the purpose of establishing the existence of Private rights AHMODI BEGUM *v* TARAKNATH GHOSE (1913) . . . 17 C W. N. 1173

HURT.

See CHARGE I. L. R. 40 Calc. 168

See CUMULATIVE SENTENCES I. L. R. 40 Calc. 511

HUSBAND AND WIFE

See CONTRACT ACT (IX OF 1872), s 25 I. L. R. 37 Bom. 280

——— *Restitution of conju*

fused on 19th July 1906, but the plaintiff took no further action for more than two years, and eventually on 20th July 1911 filed a suit for restitution *Held*, that this particular form of remedy had become barred under Article 35 of the old Limitation Act (XV of 1877) *Dhanjibhoy Bomanji* v *Hirabai I L R 25 Bom 644*, followed *Held*, further, that having become so barred, it could not be revived by the passing of the new Limitation Act (IX of 1908) The provisions of s 6 of the General Clauses Act (X of 1897), discussed MAHOMED MEHDI *v* SAKINA BAI (1912) I L R. 37 Bom. 393

HYPOTHECATION.

See ADVERSE POSSESSION I L R. 36 Mad 97

I

ILLEGAL CESS.

See ABWAB I L R 40 Calc 806

ILLEGAL OR IMMORAL DEBTS

See HINDU LAW—ALIENATION I. L. R 40 Calc. 288

IMPARTIBLE PROPERTY.

See OUDH ESTATES ACT (I OF 1869) ss 2, 3 8, 10, 22 I. L. R. 35 All 391

IMPARTIBLE ZAMINDARI.

to alienate the zamin for a legitimate family or other necessary purpose beyond his life time

IMPARTIBLE ZAMINDARI—*concld*

The estate held by him is not analogous to that of an estate tail as it originally stood upon the Statute *de Donis* [Statute of Westminster II (1285) 13 Edw I, c 1] The law relating to estates held in impartible zamindaris reviewed. Where the subject of a court sale was stated to be "the right, title and interest" of the zamindar there is no presumption that what was intended to be sold was merely the life interest of the zamindar in the zamin AVALAPPA NAICKER *v* MURUGAPPA CHETTIAR (1913) I. L R. 36 Mad. 325

IMPROVEMENTS

See COURT SALE I. L. R. 36 Mad 194

See MALABAR TENANT'S IMPROVEMENTS ACT, 1900, ss 5 6, 9 TO 18 I L. R. 36 Mad 410

INADVERTENCE.

See REFUND OF COURT FEE I. L R. 40 Calc 365

INAM LAND

——— acquisition of—

See RIGHT OF SUIT I L. R 36 Mad. 373

INCOME TAX ACT (II OF 1886)

See CERTIORARI I L. R. 36 Mad 72

INDEMNITY BOND.

See MAHOMEDAN LAW—WAKF I. L. R. 35 All 68

INDIA COUNCILS ACT 1861 (24 & 25 VICT, C. 67).

——— s 22—

See JURISDICTION OF CIVIL COURT I. L R. 40 Calc 391

INDIAN INSOLVENCY ACT (11 & 12 VICT, C 21).

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), ss 6, 27, 36, 121 I L. R 37 Bom 464

INDIAN LEGISLATURE

See PROCESSION I L R 40 Calc 470

INFANT PARTNER

See SALE OF GOODS I. L R 40 Calc 523

INHERENT POWERS OF HIGH COURT

See STAY OF EXECUTION I. L R. 40 Calc 955

INHERITANCE.

See HINDU LAW—STRIDHAN I. L. R. 40 Calc 82

INJUNCTION.

See CIVIL PROCEDURE CODE (ACT V o3 1908), s 80 . I L. R. 37 Bom 24F

INJUNCTION—*concld.*

See CIVIL PROCEDURE CODE (1908), O. XXXIV, R. 1; O. XLIII, R. 1. **I. L. R. 35 All. 425**

See EASEMENTS . **I. L. R. 36 Mad. 11**

See LANDLORD AND TENANT. **I. L. R. 35 All. 292**

See TRADE-NAME **I. L. R. 40 Calc. 570**

———— prayer for—

See COURT-FEE **I. L. R. 40 Calc. 245**

———— suit for—

See MAMLATDARS' COURTS ACT (BOM. ACT II OF 1906), s. 23. **I. L. R. 37 Bom. 595**

INJURY.

See TRADE-NAME **I. L. R. 40 Calc. 570**

INSOLVENCY.

See CIVIL PROCEDURE CODE, 1882, CH. XX. . **I. L. R. 35 All. 402**

See INDIAN INSOLVENCY ACT (11 & 12 VICT. c. 21).

See PROVINCIAL INSOLVENCY ACT (III OF 1907).

See RECEIVER **I. L. R. 40 Calc. 678**

———— of purchaser—

See SALE OF GOODS **I. L. R. 40 Calc. 523**

———————— *Adjudication effect of order of—Property situate at Delhi attached by order of District Court of Delhi Title of Official Assignee—Presidency Towns Insolvency Act (III of 1909) ss. 17, 126—Auxiliary aid—Provincial Insolvency Act (III of 1907), s. 50.* Under s. 17 of the Presidency Towns Insolvency Act, on the making of an order of adjudication by this Court, the property of the insolvent situate in every part of British India vests in the Official Assignee of Bengal. *Official Assignee, Bombay, v. Registrar, Small Cause Court, Amritsar, I. L. R. 37 Calc. 418; L. R. 37 I. A. 86,* followed. Where prior to the order of adjudication by this Court, certain properties at Delhi belonging to the insolvent, were attached under degrees of the District Court of Delhi, and the subsequent application of the Official Assignee of Bengal for realisation of the insolvent's assets so attached was refused by the District Judge, and the properties were thereafter sold in execution and the sale proceeds brought into the District Court, an order was made under s. 126 of the Presidency Towns Insolvency Act requesting the District Judge of Delhi to act in aid under s. 50 of the Provincial Insolvency Act. *In re* JEWANDAS JHAWAR (1912) **I. L. R. 40 Calc. 78**

INSOLVENCY RULES, BOMBAY.

———— rule 37—

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), ss. 6, 27, 36 AND 121. **I. L. R. 37 Bom. 464**

INSTALMENT.

See LIMITATION ACT (IX OF 1908) SCH. I, ART. 75. **I. L. R. 35 All. 435**

INSTALMENTS.

———— power to grant—

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879) s. 20. **I. L. R. 37 Bom. 486**

INSTRUCTIONS TO COUNSEL.

———————— *Charges of misconduct by Counsel—Reasonable grounds—Privilege against Court—Disciplinary action against Counsel.* The Court is entitled to ask counsel, who, during the conduct of a case makes charges of misconduct, whether he makes the charges on instructions, and, if so, on whose. It is not sufficient to plead instructions. Counsel have responsibility in the matter, and are not justified in making serious charges of fraud and crime unless they are personally satisfied that there are reasonable grounds for putting them forward. Instructions to counsel are only privileged in the sense of being protected from disclosure to the opponent. There is no privilege as against the Court The latter cannot use them as evidence in the case, and for the purpose of the trial would have to treat them as confidential, but they could be called for then and there and be used after the trial for determining whether disciplinary action should be taken against counsel by the Full Court. WESTON AND OTHERS v. PEARY MOHAN DASS (1912). **I. L. R. 40 Calc. 898**

INSURANCE.

See TRANSFER OF PROPERTY ACT (IV OF 1882, AS AMENDED BY ACT II OF 1900), s. 130 **I. L. R. 37 Bom. 198**

———————— *Damage by fire—Possession of Insurance Company and their acts after fire is extinguished—Damage to machinery of mill by water used to extinguish fire—Omission to protect or clean machinery—Arbitration—Evidence taken by arbitrators alleged to be outside scope of reference—Petition to Court to revoke submission—Arbitration Act (IX of 1890), s. 10.* The provisions in virtue of which, under the conditions of a policy, an Insurance Company takes and holds possession of premises damaged by a fire, are for the purpose of enabling it to minimise the damage. As it has to bear the loss it is, more than anyone, directly interested in doing everything for the best, not as a duty to the insured, but in its own interest. Its powers are of the nature of a privilege to do that which is most for its own benefit under the circumstances so as to reduce the loss. After a fire in October 1906 at the Victory Mills Bombay, which then belonged to the appellant, he sent in his claim to the respondents, who took possession of the premises under powers reserved to them in that behalf in the policy, and retained possession for a considerable period for salvage purposes. The assessment of the damages was disputed

INSURANCE—*contd.*

and the matter was in accordance with the terms of the policy referred to arbitration, in the course of which the appellant tendered evidence to prove that the machinery was seriously damaged not only by the actual fire, but owing to the water used to extinguish the fire being allowed to remain on it, the injury in that way being progressive The evidence was objected to on the ground that damage so caused to the machinery did not come within [illegible] but that the [illegible] ceased when [illegible] rbitrators ad- [illegible] respondents petitioned the High Court to revoke the submission to arbitration on the ground that the arbitrators had exceeded their jurisdiction in admitting evidence, which would only relate to damage from some tortious act of the respondents which was outside the reference to arbitration The Judge of the High Court, before whom the matter came, made no order on the petition being of opinion that the arbitrators had decided nothing by admitting the evidence, and that there was no reason to interfere with their action The respondents appealed and the appeal was allowed, the appellate Bench of the High Court expressing [illegible] the question of any loss or damage alleged to have arisen from the neglect of the respondents to take care of the machinery after the fire had been extinguished, and the respondents to had entered into possession of the premises *Held* (reversing the decision of the Appellate High Court and restoring that of the [illegible] respondents They may have thought it was not worth while to spend money in drying the machinery, but right or wrong they unquestionably had full power to take the course which in fact they did take But having taken possession of the premises and done what in their opinion was wisest to minimise the damage, they could not say that the actual damage done was not the natural and direct consequence of the fire AHMEDBHOY HABIBHOY v BOMBAY FIRE AND MARINE INSURANCE COMPANY . **I. L R. 37 Bom. 183**

INSURANCE COMPANY.

See TRADE NAME
I L. R. 40 Calc. 570

INTENTION.

See PENAL CODE ACT (XLV OF 1860), ss 300 AND 325
I. L. R. 35 All. 329

———— to deceive—

See TRADE-NAME.
I. L R. 46 Calc. 570

INTEREST.

See CIVIL PROCEDURE CODE (ACT V OF 1908), SCH III, s 7 (1) (*b*), ss. 69, 70 **I. L. R. 37 Bom 32**

See EXORBITANT INTEREST.

See LIMITATION **I. L. R. 37 Bom. 326**

See LIMITATION ACT (IX OF 1908), s 20 . **I. L. R. 35 All. 378**

———— grounds for reduction of—

See INDIAN CONTRACT ACT
I. L R 36 Mad. 533

———— *Usufractuary mortgage—interest not stipulated for—Charge in the nature of mortgage must be in writing and registered* Where no interest is stipulated for in a mortgage bond, no interest is recoverable A charge in the nature of mortgage, whether for principal or interest, must be expressed in writing and registered, and cannot be raised by implication *Kuttiumma* v *Madhava Menon, 11 Mad L J 186*, followed, *Imdad Hasan* v *Badri Prasad, I L R 20 All 401*, distinguished MAKBUL ALI *v* ALI AHMAD (1913) . . **I L. R. 40 Calc. 514**

INTEREST POST DIEM

See MORTGAGE **I. L R. 35 All. 534**

INTERLOCUTORY ORDER.

See CIVIL PROCEDURE CODE, 1908, O XX, R 18 **I L. R. 35 All. 159**

INTERROGATORIES.

———— *Admissibility of interrogatories—Inadmissibility of certain questions as interrogatories though admissible in cross examination—Interrogatories obviously designed to assist in fishing up a case—Defence of wagering—Inadmissibility of interrogatories by the parties raising defence of wagering as to the general business transactions of the opponent apart from the particular transactions in suit* The mere fact that questions would be admissible in cross examination of a witness, does not make them good as interrogatories Interrogatories must not be exhibited unreasonably or vexatiously, nor be prolix, oppressive unnecessary or scandalous Nor should interrogatories be allowed which are sought to be administered obviously for the purpose of fishing out a case. The Court will, in cases where the defence of wagering is set up, refuse to allow the party setting up this defence to interrogate his opponent generally as to his business transactions apart from the particular transactions in suit, on the ground that it is manifestly unfair to compel a man to disclose his general dealings on the chance that thereby his opponent may discover something that will support his case BHAGWANDAS PARASHRAM *v.* BURJORJI RUTTONJI (1912)
I. L. R. 37 Bom 347

INVENTORY.

See ADMINISTRATION.
L. R. 40 I. A. 236

IRREGULARITY.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 1.
I. L. R. 37 Bom. 682

See JURISDICTION OF CRIMINAL COURT.
I. L. R. 40 Calc. 360

ISSUES.

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 11 I. L. R. 37 Bom. 563

See PRELIMINARY DECREE.
I. L. R. 37 Bom. 60

——— *Several issues should not be tried together.* The practice of trying all the issues in a case together defeats the object of the law in requiring the various issues to be kept separate and distinct, and cannot but lead to confusion. RAJANI KANT MUKERJEE *v.* RAM DULAL DAS (1912) . . 17 C. W. N. 55

J

JALKAR.

——— *Rights in a river—Bed of a river, meaning of—Hunter's Statistical Accounts if can be referred to for establishing existence of private rights. Per* JENKINS, *C. J.—Jalkar* rights of a river extend to waters in the river bed though they are not connected with the waters of the flowing stream throughout the year. Where the right of fishery is in a river the Court has to be satisfied on a consideration of all the material facts and conditions whether it can fairly and reasonably be said that the waters over which the fishery is claimed are a part of the river. *Per* HARINGTON, *J.*—The tract in dispute was the bed of the river because it was habitually and regularly covered by the river for a substantial portion of the year in the ordinary course of nature. *Per* MOOKERJEE, *J.*—The bed of a river is the whole of what contains its waters when most swollen in whatever time of the year without leaving its channel and overflowing its banks. The grantee of a fishery right in the river is entitled to fish in all waters comprised within the banks of the river, and the circumstance that a particular sheet of water may, during part of the year, be disconnected from the flowing stream or permanent current does not affect the rights of the grantee. AHMODI BEGUM *v.* TARAKNATH GHOSE (1913). . . 17 C. W. N. 1173

JEWISH LAW.

——— *Marriage Custom—"Ketuba," legal effect of—Rights of wife.* In a suit brought by a Jewish lady, married in Calcutta, for the recovery from her deceased husband's estate of the sum mentioned in a *ketuba*, executed on the occasion of their marriage: *Held*, that the *ketuba* was a necessary but formal incident of the marriage contract and ceremonial, and created no such right in favour of the widow. JOSHUA *v.* ARAKIE (1912) . I. L. R. 40 Calc. 266

JOINDER OF PARTIES.

See HINDU LAW—JOINT-FAMILY.
I. L. R. 37 Bom. 340

JOINT FAMILY PROPERTY.

See UNITED PROVINCES LAND REVENUE ACT (II OF 1901), ss. 107, 111, 112.
I. L. R. 35 All. 548

JOINT HINDU FAMILY.

See HINDU LAW—JOINT FAMILY.

See INSOLVENCY OF PURCHASER.
I. L. R. 40 Calc. 523

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), ss. 107, 111.
I. L. R. 35 All. 527

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), ss. 111, 112, 233(*k*).
I. L. R. 35 All. 126

JOINT OWNERS.

See NOTICE . I. L. R. 40 Calc. 503

JOINT PROPERTY.

See LIMITATION ACT (XV OF 1877). SCH. I, ART. 127.
I. L. R. 37 Bom. 64

JOINT TRIAL.

See CHARGE . I. L. R. 40 Calc. 318

See CRIMINAL PORCEDURE CODE (ACT V OF 1898), s. 337, CL. (*3*).
I. L. R. 37 Bom. 146

JUDGMENT.

See CIVIL PROCEDURE CODE, 1908, O. XX, R. 2 . I. L. R. 35 All. 368

See CIVIL PROCEDURE CODE, 1908, O. XLI, R. 11. I. L. R. 37 Bom. 610

JUDICIAL PROCEEDING.

See CHOTA NAGPUR TENANCY ACT, 1908, s. 27 . I. L. R. 40 Calc. 518

JURISDICTION.

See AGRA TENANCY ACT (II OF 1901), s. 95 . . I. L. R. 35 All. 14

See CIVIL AND REVENUE COURTS.
I. L. R. 35 All. 464

See CIVIL PROCEDURE, CODE, 1908, SCH. III, ss. 7 (*1*) (*b*) 69, 70.
I. L. R. 37 Bom. 32

See CIVIL PROCEDURE CODE, 1908, s. 60.
I. L. R. 37 Bom. 415

See CIVIL PROCEDURE CODE, 1908, s. 68, O. XXI, R. 100
I. L. R. 37 Bom. 488

See CIVIL PROCEDURE CODE, 1908, s. 92 . I. L. R. 35 All. 459

See CIVIL PROCEDURE CODE, 1908, O. XXIII, R. 1.
I. L. R. 37 Bom. 682

JURISDICTION—*contd*

See COLLECTOR I L R 40 Calc 465

See COMPLAINT DISMISSAL OF I L R 40 Calc 444

See COURT FEE I L R 40 Calc 245

See COURT FEE I L R 40 Calc 615

See COURT OF WARDS ACT (BOM ACT (I OF 1905) s 3 (*c*) I L R 37 Bom 313

See CRIMINAL PROCEDURE CODE s 110 I L R 36 Mad 96

See CRIMINAL PROCEDURE CODE s 125 I L R 35 All 103

See CRIMINAL PROCEDURE CODE s 179 I L R 35 All 29

See CRIMINAL PROCEDURE CODE s 195 CL 7(*c*) I L R 36 Mad 138

See CRIMINAL PROCEDURE CODE SS 517 520 I L R 35 All 374

See DIVORCE ACT (IV OF 1869) s 3 (*2*) I L R 37 Bom 57

See EXECUTION OF DECREE I L R 35 All 119

See GENERAL CLAUSES ACT (X OF 1897) s 3(*25*) I L R 35 All 156

See HEREDITARY OFFICES ACT (BOM ACT III OF 1874) SS 11 11A I L R 37 Bom. 37

See HIGH COURT JURISDICTION OF

See JURISDICTION OF CIVIL COURT

See JURISDICTION OF CRIMINAL COURT

See JURISDICTION OF DISTRICT COURT

See JURISDICTION OF HIGH COURT

See JURISDICTION OF SMALL CAUSE COURT

See LETTERS PATENT (AMENDED) OF THE BOMBAY HIGH COURT s 12 I. L. R. 37 Bom. 494

See MAMLATDARS COURTS ACT (BOM ACT II OF 1906) s 23 I L R. 37 Bom 595

See MESNE PROFITS I L R. 40 Calc 56

See PENAL CODE SS 463 471 I L R. 36 Mad 387

See PENSIONERS ACT (XXIII OF 1871) s 4 I L R 37 Bom 91

See PRACTICE I L R 37 Bom 144

See PRELIMINARY DECREE I L R. 37 Bom 60

See REVENUE JURISDICTION ACT BOMBAY (X OF 1876) SS 4 (*c*) 5 AND 6 I L R 37 Mad 542

See SANCTION FOR PROSECUTION I L R 40 Calc 37, 423

JURISDICTION—*concld*

——— dismissal of the suit for want of—

See CIVIL PROCEDURE CODE 1908, s 11 I L R 37 Bom 563

——— *Secretary of State for India in Council— Dwell or carry on business or personally work for gain —Letters Patent 1865 s 12* This Court has no jurisdiction to entertain a suit brought against the Secretary of State for India in Council where the cause of action wholly outside the ordinary original civil jurisdiction of this Court on the sole ground that the Secretary of State for India in Council dwelt or carried on business or personally worked for gain within the local limits of Calcutta the capital of India at time of the institution of this suit *Doya Narain Tewary* v *The Secretary of State for India I L R 14 Calc 256* followed RODRICKS *v* SECRETARY OF STATE FOR INDIA (1912) I L R 40 Calc 308

——— *Practice—Evidence in criminal case recorded by Assistant Sessions Judge —Judgment pronounced by Sessions Judge without rehearing the evidence* Where a Sessions Judge decided a case upon evidence taken not before him but before an Assistant Sessions Judge it was *held* that the Sessions Judge s judgment was *ultra vires* and a fresh trial was ordered EMPEROR *v* BADRI PRASAD (1912) I L R 35 All 63

JURISDICTION OF CIVIL COURT

1 ——— *Right of suit against Secretary of State for India in Council —Burma Town and Village Lands Act (Burma Act IV of 1898) s 41(b)—Act taking away power of subject to sue Government to determine any right to land—Power of Lieutenant Governor in Council to pass Act—Legislation ultra vires—India Councils Act*

determine any claim to any right over land as against the Government was *ultra vires* of the Lieutenant Governor of Burma in Council and therefore invalid Section 22 of the India Councils Act 1861 (24 & 25 Vict c 67) provides that the Governor General in Council shall have no power

the same suits remedies and proceedings legal and equitable against the Secretary of State in Council of India as they could have done against the East India Company was to debar the Government of India from passing any Act which could prevent a subject from suing the Secretary of State in Council in a Civil Court in any case in which he

LAND ACQUISITION ACT (I OF 1894) —*contd.*

three-fifths to the ryots and two-fifths to the zamindar. *Raja Bommadevara Venkatanarasimha Nayudu Bahadur* v. *Lakshmanna (Appeal No. 119 of 1893)*, *Shama Prosunno Bose Mozumdar* v. *Brakoda Sundari Dasi, I. L. R 28 Calc. 146*, *Dinendra Narain Roy* v. *Tituram Mukerjee, I. L.R. 30 Calc. 801*, *Bhupati Roy* v. *Secretary of State, 5 C. L. J. 662*, and *Satis Chandra Chottopadhaya* v. *Rai Jatindra Nath Cowdhury, 7 C.L.J. 284*, distinguished. *Rajah Ramchandra Appa Rao Bahadur* v. *Sriramulu* [*Appeal No. 118 of 1898 (unreported)*], referred to. On a consideration of the whole evidence in the case, their Lordships affirmed the decision of the lower Court which gave to the ryots the whole value of the trees, (fruit) trees that stood upon the land which was compulsorily acquired. *Narayana Ayyangar* v. *Orr, I. L. R. 26 Mad. 252*, and *Bodda Goddeppa* v. *The Maharaja of Vizianagram, I. L. R. 30 Mad. 155*, distinguished. *Per* CURIA : Proceedings under part III of the Act are not by way of appeal and what is contemplated is a new enquiry by the District Judge. BAMMADEVARA VENKATANARASIMHA NAIDU *v.* SUBBARAYUDU (1913) . . . **I. L. R. 36 Mad. 395**

——— **proceedings under.**

See APPEAL TO PRIVY COUNCIL.

I. L. R. 40 Calc. 21

——— **ss. 3 (*b*), 11, and 31 (*1*) and (*2*)**—*Compensation-money deposited in Court under s. 31 (2)—Claim of Government to deduct poundage and fees paid by Government on such deposit out of the moneys deposited—Person interested in compensation-moneys—Compensation-money how to be apportioned among.* Government sought under the Land Acquisition Act (I of 1894) to acquire a piece of land vested in the City of Bombay Improvement Trust under Schedule C of Bombay Act IV of 1898, and in the occupation of one Pestonji Jehangir under an agreement with the Improvement Trust under which he had the right to obtain a lease, of the land for 99 years when certain buildings had been erected in accordance with the terms of the said agreement. The amount payable as compensation for the land was fixed by the Collector under s. 11 of the Act and was apportioned under the same section between the Government, the Improvement Trust and Pestonji Jehangir. The amount awarded to the Improvement Trust was deposited by the Collector in Court under s 31 (2) of the Act and poundage and fees thereon were paid by Government. Pestonji Jehangir raised objections to the basis on which his claim has been valued, but this matter was settled by a consent decree. Government thereon claimed to deduct the amount of the poundage and fees paid by them from the amount deposited in Court : *Held*, that the Court had only power to direct payment of the compensation money without any deduction to the person or persons interested therein and consequently had

LAND ACQUISITION ACT (I OF 1894) —*contd.*

——— **ss. 3 (*b*), 11, and 31 (*1*) and (*2*)**—*concld.*

no power to direct that a portion of such money should be refunded to Government as representing the poundage and fees paid by them when the money was deposited in Court. *Semble:* It is possible for a person to be interested in the compensation-money within the meaning of cl. 11 of the Act without having an interest in the land in the legal sense of the term, and that the Collector and the Court should apportion the sum awarded among the persons interested as far as possible in proportion to the value of their interests, the market value of which might afford some guide as to the amount to be apportioned in respect of that interest, but only considered in relation to the total sum awarded as compensation. PESTONJI JEHANGIR MODI, *In the matter of* (1911).

I. L. R. 37 Bom. 76

——— **s. 18** —*Money paid out to one party before reference heard—Power of Court to entertain reference—Inherent power to recover the money.* The mere fact that the compensation-money awarded under the Land Acquisition Act has been paid out to a party, does not oust the jurisdiction of the Civil Court to entertain a reference duly made under s. 18 of the Act. Where the party to whom the money had been paid is found to have no title to receive it, the Court to which the reference has been made has inherent power to recall it. In this case, the High Court directed that on failure of the party to restore the money within a time limited the other party would be entitled to recover it in execution. JOGESH CHANDRA RAY *v.* YAKUB ALI (1912).

17 C. W. N. 1057

——— **s. 30**—*Compensation—Mode of apportioning amount allotted as compensation between different interests.* Where land, which is taken up under the Land Acquisition Act, belongs to two or more persons the nature of whose interest therein differs, the compensation allotted therefor must be apportioned according to the value of the interest of each person having rights therein so far as such value can be ascertained. HIRDE NARAIN *v.* POWELL (1912) . **I. L. R. 35 All. 9**

——— **s. 31, cl. (*2*)**—

See SHEBAIT . **I. L. R. 40 Calc. 895**

——— **s. 54**—

1. ——— *High Court—Decision by High Court on appeal—Appeal to Privy Council—Leave to appeal—Letters Patent, cl. 39.* An appeal, does not lie to His Majesty's Privy Council from the decision of the High Court on appeal under s. 54 of the Land Acquisition Act (I of 1894). *Rangoon Botatoung Company, Ld.* v. *The Collector, Rangoon, I. L. R. 40 Calc. 21*, followed. SPECIAL OFFICER, SALSETTE BUILDING SITES *v.* DOSSABHAI BEZONJI (1913) . . **I. L. R. 37 Bom. 506**

LAND ACQUISITION ACT (I OF 1894) —*concld*

———— s 54—*concld.*

2 ———————— *Order directing compensation to be invested in Government securities if appealable—'Award' what is* An order under s 32 of the Land Acquisition Act by which the sum awarded as compensation is directed to be invested in Government securities, is an integral part of the award made in the case and is open to appeal under s 54 of the Land Acquisition Act TRINAYANI DASSY *v* KRISHNA LAL DEY (1910) **17 C W N 935n**

LAND CESS

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), ART 30
I L R 36 Mad. 18

LANDHOLDER AND TENANT.

See LANDLORD AND TENANT

LANDLORD AND TENANT

See AGRA TENANCY ACT (II OF 1901), ss 28, 29, 30 AND 34
I L R 35 All 123

See AGRA TENANCY ACT (II OF 1901), ss 79 AND 95 **I L R 35 All. 299**

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 111
I L. R. 35 All 145

1 ADVERSE POSSESSION

———————— *Adverse possession against landlord—Transferee of non transferable occupancy holding in possession for over 12 years—Payment of rent by him as marfatdar—Suit for ejectment—Limitation—Limitation Act (IX of 1908) Sch I Art 142* Where a person recorded in the record of rights as a trespasser was in possession of the land in dispute for more than 12 years but

possession against the trespasser after 12 years was not barred by limitation *Ishan Chandar* v *Ram Ranjan 2 C L J 125* and *Raltoo Singh* v *Sudhram Ahir, 8 C I J 557*, referred to JADU NATH BELEL *v* RAJ NARAIN MUKHERJEE (1912) . . . . . **17 C W N 459**

LANDLORD AND TENANT—*contd*

2 EJECTMENT

1 ———————— *Suit for Ejectment—Tenant's claim to hold more land than included in lease—Limitation—Onus—Limitation Act (XV of 1877) Sch II, Art 142* In a suit by the zemindars for ejectment, the defendants claimed to hold seven *puras* of land as a *mokurari chal* under a *sanad* of 1740 renewed in 1815 which purported to grant only two *puras* The defendants also pleaded limitation The boundaries of the *mokurari chal* on three sides were specified in the *sanad* and were identifiable but the other boundary was described as an *ail* The plaintiffs failed to prove that they or their predecessors ever had possession of any portion of the seven *puras* since the *sanad* was originally granted and they also failed to show what was the eastern boundary if it was not the *ail* pointed out by the defendants, which if accepted would make the lands seven *puras*: *Held* that the plaintiffs having failed to prove that the lands in suit were not covered by the *sanad* and that they had been dispossessed or that their possession had been discontinued within 12 years before the suit it was properly dismissed It lay upon the plaintiffs to prove not only title as against the defendants to the possession but to prove that the plaintiffs had been dispossessed or had discontinued to be in possession of the lands within 12 years of the commencement of the suit DHARANI KANTA LAHIRI CHOWDHURI *v* GABAR ALI KHAN (1912) **17 C W N 389**

2. ———————— *Tenancy termination of by notice to quit—Tenancy outside Transfer of Property Act (IV of 1882)—Sufficiency of notice—Service by registered post—Proof—Endorsement of tender and refusal by postal officers, if sufficient—Permanency of tenure question when one of law—Second Appeal* The rule which has generally been applied to cases outside the Transfer of Property Act in connection with the sufficiency of a notice to quit is that the notice must be a reasonable notice The tender to and refusal by the defendant of a cover sent by registered post and containing the notice to quit was sufficiently proved by the endorsement on the cover or envelope stating the defendant's refusal to receive the document *Jogendra Chander Ghose* v *Dwarka Nath Karmokar, I L R 15 Calc 681*, followed A finding of the lower Appellate Court that a tenure is not permanent if and when open to Second Appeal discussed DURGA NATH PARAMANICK *v* RAJENDRA NARAIN SAHA (1913) **17 C W. N 1073**

3 ———————— *Ejectment—Purchaser of non transferable occupancy holding possession for more than 12 years—Rent payment as marfatdar—Tenant, recognition by landlord—Possession if adverse—Limitation if would extinguish right or create limited interest and tenancy* A plaintiff suing in ejectment a purchaser of a non transferable occupancy holding cannot succeed (unless he makes out a case under s 1[illegible]

LANDLORD AND TENANT—*contd.*

2. EJECTMENT—*concld.*

the Limitation Act) where his right to possession accrued long before 12 years of the commencement of the suit. Where the defendant had paid rent for more than 30 years and the rent had been received by the landlord from the defendant as *marfatdar* of the original tenant who had no transferable right, a Court would be slow to hold that a complete extinguishment of the plaintiff's right took place by adverse possession and prefer to hold that the statute of limitation created a limited interest and tenancy. The mere fact that in rent receipts the word *marfatdar* is used is not conclusive to show that there was no recognition and the Courts should determine in each case whether, on a consideration of all the facts, not merely by giving undue weight to words used, a legal inference is or is not to be drawn that there has been a recognition establishing a relationship of landlord and tenant between one who has paid and another who has received rent for a number of years. PRABHABATI DASSI *v.* TAIBATUNNESSA CHOWDHURANI (1913) . . 17 C. W. N. 1088

3. HYPOTHECATION.

——— *Tenant in possession without a patta—Suit to enforce hypothecation of property as security for rent. Held*, that a hypothecation of other property by certain tenants as security for their rent was none the less enforceable because, though the tenants had executed a *qabuliat* in respect of the land held by them, no *patta* had been executed by the landlords in their favour. *Sheo Karan Singh* v. *Maharaja Parbhu Narain Singh, I. L. R. 31 All. 276*, referred to. SRI KISHAN DAS *v.* YAKUB KHAN (1913) I. L. R. 35 All. 505

4. INJUNCTION.

——— *House in abadi—Well sunk by tenant inside his house—Mandatory injunction—Discretion of Court.* In this the High Court refused to grant a mandatory injunction at the suit of the zamindar for the removal of a well recently constructed inside their house by tenants of a house in a town, the position of the tenants being that they and their predecessors in title had paid no rent for generations, and were only liable to ejectment in the event of the site occupied by them being cleared of buildings. BHAGWAN DAS *v.* MUHAMMAD YAHIA (1913) I. L. R. 35 All. 292

5. LEASE.

1. ——— *Evidence Act (I of 1872), s. 116—Estoppel. A* purporting to be *dharmakarta* of a temple gave a lease of the temple properties to *B*. During the tenancy, *C* and not *A* was declared, in a separate suit, to be the rightful *dharmakarta*. *B* had not attorned to nor been evicted by *C*. *Held*, that the tenancy had not been determined and that in a suit by *A* for

LANDLORD AND TENANT—*contd.*

5. LEASE—*concld.*

rent, *B* was estopped by s. 116, Indian Evidence Act, from denying *A's* title. DEVALRAJU *v.* MAHAMED JAFFER SAHIB (1913) I. L. R. 36 Mad. 53

2. ——— *Lease until lessee requires or wishes—Tenancy at will on both sides.* A lease by which the lessees are to hold for such time as they require or wish, *is a tenancy* at the will of the lessee which in law is a tenancy at the will of the lessor also: Coke on Littleton, page 55 (*a*), and Halsbury's Laws of England, Vol. 18, page 434, referred to. MANICKA *v.* CHINNAPPA (1913) . I. L. R. 36 Mad. 557

6. RENT.

1. ——— *Suit for rent—Denial of landlord's title—Landlord, if entitled to rent for use and occupation where no such alternative claim is made in the plaint.* In a suit for rent where no alternative claim is made for compensation for use and occupation, no rent can be decreed on that footing. Where in a suit for rent the defendant denied the landlord's title and the plaintiff failed to prove an alleged settlement with him and no alternative claim was made in the plaint for compensation for use and occupation: *Held*, that the landlord was not entitled to compensation for use and occupation. *Lukhee Kant Doss* v. *Sumeerooddi Luskar, 13 B. L. R. 243, Surendra Narain* v. *Bhai Lal, I. L. R. 22 Calc. 752, Rachhea Singh* v. *Upendra Chandra, I. L. R. 27 Calc. 239*, and *Gobinda Sundar* v. *Srikrishna, 10 C. L. J. 538*, followed. *Surnomoyee* v. *Dino Nath, I. L. R. 9 Calc. 908*, and *Azim Sirdar* v. *Ramlal, I. L. R. 25 Calc. 324*, discussed. *Eshen Chandra Singh* v. *Shama Charn Bhatto, 11 Moo. I. A. 7, 20*, referred to. BHUKHI KOER *v.* RAM KHELWAN PERSHAD (1912) . . . . . 17 C. W. N. 311

2. ——— *Relation of landlord and tenant—Rent, ex parte decree for, if operates as res judicata—Notice under s. 167 of the Bengal Tenancy Act (VIII of 1885) if bars suit for rent.* An *ex parte* decree in a suit for rent operates as *res judicata* upon the question of relation of landlord and tenant. *Bir Chander* v. *Harish Chander, I. L. R. 3 Calc. 883*, referred to. *Madhu Sudan* v. *Brae, I. L. R. 16 Calc. 300*, discussed and distinguished. Where a suit was decided in the presence of the defendant's pleader: *Held*, that the decree could not be called an *ex parte* one merely because the defendant did not adduce evidence or submit any argument at the trial. *Held*, also, that the *ex parte* decree did not lose its conclusive character because it was not executed. The relation of landlord and tenant being once established the mere fact of non-payment of rent is not sufficient to show that the relationship has ceased. If a landlord elects to treat the defendant as a tenant, the mere fact of his having served a notice on him under s. 167 of the Bengal Tenancy Act does not bar a suit for rent. RAJ KUMAR ROY CHOWDHURY *v.* ALIMUDDI (1912) . . 17 C. W. N. 627

LANDLORD AND TENANT—*concld*

6 RENT—*concld*

3. ———————— *Agreement to deliver agricultural produce over and above cash rent—Cess—Agreement opposed to public policy* Certain tenants holding under a registered *qabuliat* agreed therein to deliver to their landlord, over and above the sum specified as a money rent, [illegible]

valent of such dues for several years, that the covenant in question was for various reasons unenforceable *Abdul Hai* v *Nathua, 1 All L J 537*, *Sadanand Pande* v *Ali Jan, I L R. 32 All. 193*, and *Sheoambar Ahir* v *The Collector of Azamgarh, I L R. 34 All. 358*, referred to SIS RAM *v* ASGHAR ALI (1912) . . . I. L R 35 All. 19

7 TRANSFER OF HOLDING

———————— *Transfer of holding—Usufructuary Mortgage of holding, effect of—Bengal Tenancy Act (VIII of 1885), s 25—Abandonment—Forfeiture* An unauthorized transfer of a holding or the parting with possession of it, in whole or in part, does not *per se* work a forfeiture under the Bengal Tenancy Act Transfer by way of usufructuary mortgage stands on the same footing as other partial transfers *Kabil Sardar* v *Chandra Nath Nag Chowdhry, I L R 20 Calc. 590*, *Mathura Mandal* v *Ganga Charan Gope, I L R 33 Calc 1219*, referred to *Baroda Charan* [illegible]

"LANDLORD'S INTEREST."

———————— *Bengal Tenancy Act (VIII of 1885), s 148, cl (h)* By the term "Landlord's interest" in s 148, cl (*h*) of the Bengal Tenancy Act, is meant the interest of the person entitled to receive the rent from the tenant at the date of the application for the execution of the decree SHAMBHU NATH SINGH *v* SHEO PERSHAD SINGH (1913) . I. L R. 40 Calc 462

LAND REVENUE CODE (BOM. V OF 1879, AS AMENDED BY BOM. VI OF 1901).

———— s 56—*Mortgagor in possession—Failure to pay assessment—Forfeiture of land—Re grant of land to mortgagor by Collector under new tenure—Previous incumbrances not to subsist on the land re granted* In 1895, the defendants Nos 1 and 2 mortgaged their lands to the plaintiff, one of the conditions of the mortgage being that the mortgagors were to remain in possession of the land, and to pay the Government assessment. Default

LAND REVENUE CODE (BOM. V OF 1879, AS AMENDED BY BOM. VI OF 1901)—*concld*

having occurred in payment of assessment, the Collector demanded payment first from mortgagors and then from the mortgagee The latter expressed his willingness to pay, if he was placed into possession of the land The Collector eventually forfeited the land in 1902; but shortly afterwards re granted it to defendants Nos 1 and 2 under s. 56 of the Bombay Land Revenue Code (Bombay Act V of 1879 as amended by Bombay *Act VI of 1901*) on a new tenure The mortgagee (plaintiff) next obtained a decree on his mortgage; and in execution of it attached the land The attachment was, however, raised by the Revenue authorities under s 70 of the Code The plaintiff sued for a declaration that the land was liable to be attached and sold in execution of his decree The Court of first instance dismissed the suit on the ground that the plaint disclosed no cause of action On appeal —*Held*, that the land was, under the operation of s. 56 of the Bombay Land Revenue Code, vested in defendants Nos 1 and 2 free from the incumbrance which had been created and from the equities theretofore existing between them and the plaintiff VEDU SHIVLAL *v* KALU UKHARDU (1913) . . I. L. R. 37 Bom. 692

LAND REVENUE CODE, BOMBAY (BOM. V OF 1879)

See REVENUE JURISDICTION ACT, BOMBAY (X OF 1876), SS. 4 (c), 5 AND 6. I. L. R 37 Bom. 542

LEASE.

See LANDLORD AND TENANT I. L. R. 36 Mad. 557

See MINING LEASE L. R 40 I. A. 223

See RES JUDICATA I. L R. 37 Bom. 224

———— **agreement to renew.**

See SPECIFIC PERFORMANCE I. L R. 40 Calc. 565

LEAVE TO APPEAL TO PRIVY COUNCIL.

See HIGH COURT, JURISDICTION OF. I. L. R. 40 Calc. 955

See LAND ACQUISITION ACT (I OF 1894), s 54 . I. L. R. 37 Bom. 508

See PRACTICE . L. R. 40 I. A. 241

LEGACY.

———— **depending on uncertain event—**

See SUCCESSION ACT (X OF 1865). I. L. R. 37 Bom 644

LEGAL NECESSITY.

See HINDU LAW—ALIENATION. I. L. R. 40 Calc. 721

LEGAL PRACTITIONERS ACT (XVIII OF 1879).

——— s. 14—*Vakalatnama altered after execution, by inserting name of muktear actually engaged at the request of party's agent—Conduct, if grossly improper.* A written *vakalatnama* for the purpose of engaging certain pleaders to conduct an appeal on behalf of a prisoner was taken by his maternal uncle to the prisoner in jail where it was executed by the prisoner by affixing his mark in the presence of a jail officer and was handed over to the maternal uncle, who brought it to the petitioner, a *muktear*, and instructed him to appear in the appeal. The petitioner pointed out to the uncle of the prisoner that he could not appear as his name was not mentioned in the *vakalatnama* and then at the request of the latter inserted his own and other names in it and made certain other alterations: *Held*, that although the petitioner certainly acted improperly in altering the *vakalatnama*, the alterations were not made from improper motives and his conduct was not grossly improper within the meaning of s. 14 of the Legal Practitioners Act. *In the matter of* PURNA CHANDRA CHATTERJI (1912)
17 C. W. N. 328

——— ss. 27, 28—*Pleader and client—Fees, agreement for payment of, not in writing and not filed in Court, if may be enforced—Pleader's lien on moneys realised on behalf of client—Quantum meruit.* An agreement by a client to pay certain amount to his pleader as fees for professional service cannot be enforced by the latter when it has not been embodied in writing signed by the client and filed in the proper Court in the manner provided by s. 28 of the Legal Practitioners Act, even when the amount agreed to be paid is not in excess of that prescribed under the rules framed under s. 27 of the Act for payment by any party to his opponent in respect of the fees of the pleader employed by his adversary. The language of s. 28 is comprehensive enough to include every agreement between a pleader and his client for the payment of fees for professional service, and cannot be restricted by reference to s. 27 which does not apply to such agreements. *Quære:* Whether, in the absence of a written agreement, a pleader can claim reasonable compensation for his services. KAMINI DEBI *v.* KHETRA MOHAN GANGULY (1911)
17 C. W. N. 45

LEGISLATION, ULTRA VIRES.

See JURISDICTION OF CIVIL COURT.
I. L. R. 40 Calc. 391

LEGITIMATE PURPOSE.

See MORTGAGE.
I. L. R. 40 Calc. 342

LESSEE.

——— interests of—

See LIMITATION ACT (IX OF 1908) SCH. I, ARTS. 91 AND 120.
I. L. R. 35 All. 149

LETTERS OF ADMINISTRATION.

1. ——— *Revocation—Probate and Administration Act (V of 1881), s. 50, Expl. (4)—"Just cause"—"Useless or inoperative," meaning of—Disagreement between administrators, whether a just cause for annulling letters of administration.* A mere disagreement between administrators is not a "just cause" for annulling the letters of administration under s. 50, expl. (4) of the Probate and Administration Act. The words "becomes useless and inoperative" in s. 50, expl. (4) of the Probate and Administration Act, imply the discovery of something which, if known at the date of the grant, would have been a ground for refusing it, *e.g.*, the discovery of a later will or codicil, or subsequent discovery that the will was forged, or that the alleged testator is still living. *Bal Gangadhar Tilak* v. *Sakwarbai, I. L. R. 26 Bom. 792*, and *Annoda Prasad Chatterjee* v. *Kalikrishna Chatterjee, I. L. R. 24 Calc. 95*, followed. GOUR CHANDRA DAS *v.* SARAT SUNDARI DASSI (1912) . . **I. L. R. 40 Calc. 50**

2. ——— *Practice—Colonial Probates Act (55 & 56 Vict., c. 6)—Power-of-attorney, construction of.* The Colonial Probates Act and the procedure therein indicated, *viz.*, to send an exemplification of the probate granted in any part of the United Kingdom to be re-sealed by the Court to which it is sent, has not been extended to British India, where the practice is to require administration with will annexed to the estate of deceased British subject leaving property there. Authority in a power-of-attorney granted by the executrix of a will which has been confirmed in Scotland "to produce to the Supreme Court in India in the probate jurisdiction at Calcutta or elsewhere in India the said confirmation and to procure the same to be sealed with the seal of the Supreme Court in India in accordance with the laws thereof" does not authorise the donee to obtain grant of Letters of Administration. *In the goods of* WILLIAM RENNIE (1912)
I. L. R. 40 Calc. 74

LETTERS PATENT, 1865.

——— cl. 12—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 11 . **I. L. R. 37 Bom. 563**

See JURISDICTION.
I. L. R. 40 Calc. 308

——— *Leave asked for, granted by Registrar, but not ratified by Court—Leave, if may be endorsed as if granted on the date of presentation of plaint—Waiver of objection by defendant—Costs of unnecessary application.* Where leave under cl. 12 of the Letters Patent as prayed for in the plaint was granted by the Registrar, subject to its ratification by Court, but it did not appear that the plaint was ever placed before a Judge: *Held*, on the matter being brought before the Judge on a later date after defendants had filed written statement and taken several other steps towards the trial and had entered on the cross-

LETTERS PATENT, 1865—*concld.*

had taken in the suit, defendants had waived objection as to want of leave. *A. J King* v. *Secretary of State for India, I. L R 35 Calc. 394, 12 C. W. N. 705.* The application being thus unnecessary, plaintiff was ordered to pay defendants' costs SARASWATI DASSEE v. BIRAJ MOHINI DASSEE (1913) . . . 17 C. W. N. 512

——— cl. 15—*Dissentient judgments at the hearing of appeal under—Further appeal under cl 15, if lies.* Where in an appeal under cl 15 of the Letters Patent from the decision of a single judge, the judges having differed in opinion, the opinion of the Senior Judge prevailed under s. 36 of the Letters Patent: *Held,* that a further appeal lay under cl. 15 of the Letters Patent *Barlow* v. *Cochrane, 2 B. L R. (Or C. J.) 56, 115,* and *Jiwan Ram* v. *Tondi Singh, I. L R 34 All. 13,* referred to JADUNATH DANDUPAT v HARI KAR (1913) . . . 17 C. W. N. 308

——— cl. 36—

See HIGH COURT, JURISDICTION OF I. L. R. 40 Calc. 955

——— cl. 39—

See APPEAL TO PRIVY COUNCIL. I. L. R. 40 Calc. 685

——— cl. 140—

See LAND ACQUISITION ACT (I OF 1894), s 54 . . I. L R. 37 Bom. 506

LETTERS PATENT (AMENDED) OF THE BOMBAY HIGH COURT.

——— s. 12—*Ordinary original civil jurisdiction of the Bombay High Court—Suits for land and other immoveable property—Title deeds—Suit to compel the delivery of title deeds to land outside the ordinary original jurisdiction of the Bombay High Court* In a suit to enforce, *inter alia,* the delivery to the plaintiff of the title deeds of certain immoveable property situated outside the ordinary original civil jurisdiction of the Bombay High Court, where it appeared on the pleadings

the Bombay High Court had no jurisdiction to entertain the same. ZULEKABAI v EBRAHIM HAJI VYEDINA (1913) . I. L. R. 37 Bom 494

LIBEL.

——— *Defamatory words spoken by a party in the course of a judicial proceed-*

LIBEL—*concld.*

ing, if absolutely privileged—S 499, Penal Code, exceptions 7 and 9, effect of—Distinction between civil and criminal cases for defamation—English law rule of absolute privilege, if to be followed—

spoken by a party in the ordinary course of any proceeding before any Court or tribunal recognised by law: *Held, per* MOOKERJEE, J.—The language of exceptions 7 and 9 to s 499, Penal Code, does not import such absolute immunity as is recognised by English law, but in civil suits for damages for defamation the Court is not fettered by any statutory provisions, and the principle recognised in England that neither party, witness, counsel, jury nor Judge can be put to answer civilly or criminally for words spoken in office should not be dissented from. *Per* BEACHCROFT, J.—Witnesses and parties stand on a different

LICENSE.

See ABKARI ACT (BOM. ACT V OF 1878), ss 16, 43 . I. L. R. 37 Bom. 320

See ABKARI ACT (BOM. ACT V OF 1878), ss 32, 67 . I L. R. 37 Bom. 101

See ARMS ACT (XI OF 1878), ss. 13, 19 (e) . . I. L. R. 37 Bom. 181

LICENSEE.

——— liability of—

See PETROLEUM. I. L. R. 40 Calc. 356

LICENSOR AND LICENSEE.

See TRADE MARK. I. L. R. 40 Calc. 814

LIEUTENANT-GOVERNOR.

——— power of, to pass Act—

See JURISDICTION OF CIVIL COURT I. L. R. 40 Calc. 391

LIFE ASSURANCE COMPANIES ACT (VI OF 1912).

See TRADE MARK. I. L. R. 40 Calc. 570

LIFE ESTATE.

See WAKF . I. L. R. 37 Bom. 447

LIFE INSURANCE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 60 . I. L. R. 37 Bom. 471

See TRANSFER OF PROPERTY ACT (IV OF 1882 AS AMENDED BY ACT II OF 1900), s. 130 . I. L. R. 37 Bom. 198

———— *Damages for infringement of light and air—Injunction, when to be granted.* A mandatory injunction will be granted to remove an obstruction of an easement to light and air where the character of the obstruction is such that its consequence is to darken the plaintiff's house so as to make it uncomfortable and in part useless. In such a case damages would not be an adequate remedy. MUTHU KRISHNA AYYAR *v.* SOMALINGA MUNINAGANDRIEN (1913)
I. L. R. 36 Mad. 11

LIMITATION.

See ABKARI ACT (BOM. ACT V OF 1878), SS. 32, 67 . I. L. R. 37 Bom. 101

See ACCOUNT, SUIT FOR.
I. L. R. 40 Calc. 108

See ADMINISTRATION.
L. R. 40 I. A. 236

See CIVIL PROCEDURE CODE, 1882, S. 315
I. L. R. 35 All. 419

See CIVIL PROCEDURE CODE, 1908, O. XXI, RR. 84, 89, 92.
I. L. R. 35 All. 65

See COMPANIES ACT (VI OF 1882), S. 169.
I. L. R. 35 All. 177

See EXECUTION OF DECREE.
I. L. R. 35 All. 178

See GUJARAT TALUKDARS' ACT (BOM. ACT VI OF 1888), S. 31.
I. L. R. 37 Bom. 380

See HINDU LAW—ALIENATION.
I. L. R. 40 Calc. 966

See HUSBAND AND WIFE.
I. L. R. 37 Bom. 393

See LIMITATION ACT (XV OF 1877), S. 19 AND SCH. II, ART. 148.
I. L. R. 35 All. 227

See LIMITATION ACTS.

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 91 AND 120.

See NORTH WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT (XV OF 1883), S. 10 . I. L. R. 35 All. 308

See PRELIMINARY DECREE.
I. L. R. 37 Bom. 60

See PROVINCIAL INSOLVENCY ACT (III OF 1907), SS. 22, 46 AND 52.
I. L. R. 35 All. 410

See SANCTION FOR PROSECUTION.
I. L. R. 40 Calc. 239, 584

See TRANSFER . I. L. R. 40 Calc. 259

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), S. 121.
I. L. R. 35 All. 541

See VATAN . . I. L. R. 37 Bom. 81

1. ———— *Suit by an auction-purchaser to recover the purchase-money*

LIMITATION—*contd.*

from a person who attached money in deposit in Court, as representing the surplus sale-proceeds belonging to the judgment-debtor—Limitation Act (XV of 1877), Sch. II, Art. 120. Limitation applicable to a suit brought by an auction-purchaser to recover a certain sum of money from one who had, after the sale and the deposit of money in Court, attached that sum in execution of his decree against the judgment-debtor, as representing the surplus sale-proceeds belonging to the judgment-debtor after satisfaction of the original decree obtained against the debtor by the decree-holder, is that provided by Art. 120, Sch. II, of the Limitation Act (XV of 1877). *Nilkanta* v. *Imam Sahib, I. L. R. 16 Mad. 361*, relied on. *Hanuman Kamat* v. *Hanuman Mandur, I. L. R. 19 Calc. 123*, and *Ram Kumar Shaha* v. *Ram Gour Shaha, I. L. R. 37 Calc. 67*, distinguished. AMRITA LAL BAGCHI *v.* JOGENDRA LAL CHOWDHURY (1912)
I. L. R. 40 Calc. 187

2. ———— *Limitation Act (IX of 1908), Sch. I, Arts. 19 and 23—Conspiracy to maliciously prosecute, suit for—Conspiracy as a cause of action—Evidence Act (I of 1872) ss. 3, 114 ill. (g), 125—Standard of proof—Claim of privilege, whether adverse inference can be drawn from—Disclosure of source of information by privileged person, duty of Court regarding—Presumption as to possession of article found in common room of joint family dwelling house—Arrest and Search—Professional conduct of counsel—Counsel making charges of misconduct, powers of Court regarding—Counsel's instructions, no privilege as against Court—Professional Etiquette affecting counsel—Bar Council, resolutions of—Counsel accepting retainer when likely to be witness—Counsel engaged in case, propriety of appearing as witness—Adverse inference where counsel not called as witness—Inspection by counsel of book produced by witness during cross-examination—Reference to medical works by Court, without knowledge of parties—Tort. Per* WOODROFFE AND COXE, JJ. On the question of the standard of proof: there is but one rule of evidence which in India applies to both civil and criminal trials, and that is contained in the definition of "proved" and "disproved" in s. 3 of the Evidence Act. The test in each case is, would a prudent man after considering the matters before him (which vary with each case) deem the fact in issue proved or disproved? The Court can never be bound by any rule but that which, coming from itself, dictates a conscientious and prudent exercise of its judgment. There is a presumption against crime and misconduct, and the more heinous and improbable a crime is, the greater is the force of the evidence required to overcome such presumption. The English rule in these mattes does not, as such, apply in India. *Jarat Kumari Dassi* v. *Bissessur Dutt, I. L. R. 39 Calc. 245*, explained. Where a document is privileged from production, no adverse inference can be drawn from its non-production. This rule applies as regards the party claiming privilege, and *a fortiori* it applies where the privilege is claim-

LIMITATION—*con'd*

ed by a third party Although s 125 of the Evidence Act does not in express terms prohibit a witness, if he be willing from saying whence he got his information, the protection afforded by that section does not depend upon a claim of privilege being made but it is the duty of the Court, apart from objection taken, to exclude such evidence *A fortiori*, where privilege is claimed, no adverse inference can be drawn therefrom Where articles are found in a part of a house to which several persons living in the house have access such as a *boitakhana* there is no presumption that they are in the possession or control of any person other than the *karta* or head of the house *Queen Empress* v *Sangam Lall, I L R 15 All 129,* approved *Semble* It is immaterial, ... nder what sec ... he cir ... irrest, ... to call ... quite ... to his mind when he made the search The Court is *entitled to ask counsel who, during the conduct of a case makes charges of misconduct, whether he makes the charges on instructions, and, if so, on whose* It is not sufficient to plead instructions *Counsel have a responsibility in the matter, and* are not justified in making serious charges of fraud and crime unless they are personally satisfied that there are reasonable grounds for putting them forward Instructions to counsel are only privileged in the sense of being protected from disclosure to the opponent There is no privilege as against the ... as evidence in ... trial would he ... but they could be called for then and ... used after the trial for determining whether disciplinary action should be taken against counsel by the Full Court Whenever a Court relies on a ... work on medical ju ... the trial ... in oppor ... ment on ... *m Doyal Chaudhury I L R 38 Calc 153,* referred to The following resolutions of the Bar Council approved —' (*a*) If counsel knows, or has reason to believe that he will be an important witness in a case, he ought *not to accept a retainer* therein (*b*) If he accepts a retainer not know*ing or having reason to believe that he will* be such a witness, but at the opening or at any *subsequent stage before evidence is* concluded it becomes apparent that he is a wit ... he ought not ...

matters out of which the action arises is likely to be impugned in the case, he ought not to accept a retainer (*d*) If he accepts a retainer not knowing or having reason to believe that his own professional conduct in such matters is likely to be impugned but finds in the course of the case that *it is so impugned, he ought to adopt* the same course of conduct as is mentioned *in clause* (*b*) *ante* (*e*) In either of the cases mentioned in clauses (*b*) and (*d*) there is no rule of professional ethics which debars counsel, if he continues to act as counsel in the case, from going into the witness box and being cross examined ' Although the resolutions of the Bar Council are not binding on the Courts, the Bar Council is the recognised authority on matters of professional conduct and etiquette affecting counsel, and its opinion is of the greatest weight and value There is nothing necessarily unprofessional in counsel giving evidence in a case in which he appears as such *Sethna* v *Mirza Mahomed Shirazi 9 Bom L R 1014, Cobbett* v. *Hudson, 1 E & B 11 Stones* v *Byron, 4 Dowl & L 393, Deane* v *Packwood, 4 Dowl & L 395n, Corea* v *Peiris,* [*1909*] *A C 549, 14 C W N 86, Nundo Lal Bose* v *Nistarini Dassi, I L R 27 Calc 428,* referred to *Curry* v *Walter, 1 Esp 456,* distin... ... practice however it is un ... sel de... *testify* ... se they ... vidence Act, counsel, although they may be engaged in ...

not have been, under the ... but should have been called as a witness It is unprofessional for counsel to cross examine a witness as to facts within his personal knowledge *In the matter of certain Counsel,* 4th August, 1908 (unreported), approved Where counsel during the hearing of a case calls for the production of a book, which is produced and handed to him by his opponent with certain pages marked as those only to which he may refer in respect of the subject matter of his cross examination, *it is improper for counsel* who calls for the book to inspect any of the other ...

feasors, is governed by the one year rule under Arts 19 and 23 of the Limitation Act There are instances in which two or more persons con

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render themselves liable to civil proceedings by combining to injure the plaintiff, although, if one of them did the same act by himself and without any preconcert with others, he would escape liability. An action on such a conspiracy would lie in this country. In an action on conspiracy special damage must be proved. *Per* CHATTERJEE, *J.* There is no authority for holding that a tort, when committed by several persons acting in concert, is different from the same tort committed by a single individual. The combination in such cases may be an element of aggravation in the assessment of damages, but does not suffice to make it a different tort. *Quinn* v. *Leathem*, [1901] *A. C.* 495, referred to. Conspiracy or wrongful combination is not a material element in the constitution of a wrong. *Giblan* v. *National Amalgamated Labourer's Union*, [1903] *2 K. B.* 600, referred to. WESTON AND OTHERS *v.* PEARY MOHAN DASS (1912) . **I. L. R. 40 Calc. 898**

3. ——— *Land assigned to support religious service—Alienation by holder—Lease—Adverse possession.* In the case of a lease for a term of years by the holder for the time being of lands assigned to support services rendered to a Makan and religious community by successive holders, time begins to run not from the commencement of the tenancy of the person claiming to hold as a tenant, but from the date when the claims of the parties became openly and undoubtedly adverse. *Tekait Ram Chunder Singh* v. *Srimati Madho Kumari, L. R. 12 I. A. 197*, and *Trimbak Ramchandra* v. *Shekh Gulam Zilani, I. L. R. 34 Bom. 329*, referred to. MAHAMADGAUS *v.* RAJABAKSHA (1912) . . **I. L. R. 37 Bom. 224**

4. ——— *Adverse possession—Title—Bombay Regulation V of 1827, s. 1—Rule of positive law—Limitation Act (XIV of 1859), s. 2—Limitation Act (IX of 1871), s. 2—Repeal of s. 1 of Bombay Regulation V of 1827—Effect of repeal—Construction of statute—Rule of positive law not affected by law of limitation—Endowment of village for the purpose of performing Karpur Mangalarti—Trustee—Alienation by trustee—Adverse possession by alienee.* In 1678 a village was given in *inam* to the then *Swami* of the Uttaradhi Math for the purpose of meeting the expenses of a religious service called the *Karpur Mangalarti* at the temple of the Math. A successor of the *Swami* gave away the village in gift (*i.e.* as *Krishnarpana*) to the defendants' predecessor-in-title who went into possession as proprietors. At first they paid *judi* on the land at the rate of Rs. 20 per year; but after 1840 this payment was stopped. The defendants continued to hold the village as before. In 1911, the present *Swami* of the math sued to obtain a declaration that the village belonged to him and to recover its possession from the defendants. The plea of the defendants was that the suit was barred by limitation. *Held*, that inasmuch as the original grant vested the legal property in the *Swami* and the equitable estate in the juridical person, the idol, the original grantee took as a trustee and his successors held by the same title. *Hardoon* v. *Belilios*, [1901] *A. C. 118, 121*, followed. *Held*, further, that since the defendants went into possession of the village in 1830, their title ripened in 1860 into ownership under the provisions of s. 1 of the Bombay Regulation V of 1827. *Held*, also, that the operation of s. 1 of the Bombay Regulation V of 1827 was not affected by the enactment of s. 2 of the Limitation Act (XIV of 1859), *first*, because the Act did not come into force till the 1st January 1862; and, *secondly*, because it being a statute of limitation did not affect s. 1 of the Bombay Regulation V of 1827, which was an enactment of positive prescription. *Sitaram Vasudev* v. *Khanderav Balkrishna, I. L. R. 1 Bom. 286*, and *Rambhat Agnihotri* v. *The Collector of Puna, I. L. R. 1 Bom. 592*, followed. Where a later Act of Legislature does not purport or affect to supersede an earlier Act, the Court will endeavour to read the two enactments together and to avoid conflict if possible. RANGACHARYA *v.* DASACHARYA (1912) **I. L. R. 37 Bom. 231**

5. ——— *Suit for redemption of mortgage made in 1793—Act XIV of 1859 s. 1, cl. 15, and s. 4—Act IX of 1871, s. 20, and Sch. II, Art. 148—Act XV of 1877, s. 19, and Sch. II, Art. 148—Acknowledgment of title—Receipt by mortgagees—Interest after date of suit—Damdupat—Discretion as to award or not of interest—Assumed exercise of discretion not interfered with.* A suit was brought, by the predecessors-in-title of the respondents, for redemption of a mortgage, dated 4th November 1793, in favour of the predecessors-in-title of the appellants. The deed mortgaged with possession a certain *desaigiri dastur* and certain *pasaeta* lands situate in the district of Broach, and after that district finally came under British rule the *desaigiri dastur* was commuted into a fixed money allowance payable from the treasury since which settlement the appellants had received that allowance in lieu of the *desaigiri dastur*. The defence was that the suit was barred by the Indian Statutes of Limitation which provide a period of sixty years for redemption, and that more than that time had elapsed since the date of the mortgage. The respondents, however, put in evidence documents signed by the mortgagees by which they contended the period of limitation had been extended. *Held* (affirming the decision of the High Court), that an entry in a receipt book relating to the payment on 8th June 1843 of the fixed allowance from the treasury in respect of the year ending 1st May 1843, was an acknowledgment under the Indian Acts of Limitation (XIV of 1859, s. 1, cl. 15, Act IX of 1871, s. 20, and Act XV of 1877, s. 19) made within the period of limitation, and sufficient to prevent the suit from being barred. The rights of the mortgagees were then vested in somewhat unequal shares in two persons named in the receipt, whose names had in the ordinary course been entered in the Collector's books as mortgagees under the mort-

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gage in suit, as being entitled to the payment of the annual allowance into which the original rights had been commuted The entry in the book of the Government agent entrusted with the payment stated that it was made to the two persons named The amounts of the shares of each of them was set against their names, and against those shares the mortgagees had written their respective names in acknowledgment of the receipt of their shares This acknowledgment created a new period of limitation from 8th June 1843, and consequently the suit was not barred The appellants claimed to be allowed interest on the redemption money for the period between the date of suit and the actual date of redemption Admittedly the rule of *damdupat* applied, and therefore the amount of arrears of interest to be allowed was limited to an amount equal to the capital sum The District Judge gave no interest from the date of suit There was nothing to show that he had done so by an oversight or mistake The High Court treated the matter as if the District Judge had exercised his discretion and had declined to give interest, and they thought that it had not been an unreasonable exercise of his discretion No application was ever made to the District Judge to amend his alleged omission to give interest and their Lordships agreed with the High Court decision and the grounds on which it rested HIRALAL ICHHALAL *v* NARSILAL CHATURBHUJDAS (1913) **I L R 37 Bom 326**

6 ———————— *Suit filed after limitation in wrong Court—Return for presentation to proper Court—Bar of limitation in spite of Limitation Act (XV of 1877), s 14* If a plaint is returned for presentation to the proper Court on the ground of absence of jurisdiction in the Court to which it was originally presented the suit when presented to the new Court is a new suit and cannot be regarded as a continuation of the infructuous suit in the wrong Court This is the basis of s 14 of the Limitation Act (XV of 1877) Hence if the suit when originally filed in the wrong Court would have been ordinarily barred by limitation as by being barred during the holidays of that Court after which alone it was filed the suit when filed in the new Court must be held to be barred in spite of s 14 of the Limitation Act *Mohidin Routhen* v *Nallaperumal Pillai 21 Mad L J 1000,* followed *Takuroodeen Mahomed Eshan Chowdry* v *Kurimbox Choudry 3 W R Cr 20, Khelat Chandar Ghose* v *Nuseebunnissa Bibee, 16 W R Cr 47,* and *Assan* v *Pathumma, I L R 22 Mad 494,* distinguished SESHAGIRI ROW *v* VAJRA VELAYUDAM PILLAI (1913) **I. L R 36 Mad 482**

7 ———————— *Statute of, if affects procedure only—Amending statute when affects rights—Effect on causes of action previously accrued—Bengal Tenancy Act (VIII of 1885), s 184, Sch III, Art 3—Eastern Bengal and Assam Tenancy Amendment Act (E B and Assam I of 1908), s 61, cl* (3)—*Under raiyat, dispossessed by landlord before amending Act, suit to recover brought after—Limitation—Statute, construction of—Presumption against retrospective operation, where amendment of procedure affects rights—Postponement of operation of statute, effect of—Procedure, statutes of, retrospective operation of* The presumption against a retrospective construction of a statute has no application to enactments which affect only the practice and procedure of Courts even where the alteration which the statute makes has been disadvantageous to one of the parties *Per* MOOKERJEE *J* agreeing with N R CHATTERJEA, *J* (CARNDUFF *J contra*)—The statement that a statute of limitation embodies merely a rule of procedure is only generally and not universally true Where, if a statute of limitation is taken to effect pre existing causes of action, the effect is to absolutely bar all actions where the cause of action had accrued more than the limited time before the statute was passed, the statute ceases to be one of mere procedure and operates to the destruction of existing and enforcible rights In such cases the presumption against a retrospective construction of the statute becomes applicable, unless the coming into operation of the statute has been postponed so as to allow reasonable time for enforcement of existing causes of action No suitor has a vested interest in the course of procedure or a right to complain, if during the litigation the procedure is changed provided no injustice is done S 61, cl (3) of the Eastern Bengal and Assam Tenancy Amendment Act of 1908 which provides a two years period of limitation for suits by *raiyats* and under *raiyats* for recovery of possession (when dispossessed by or through the agency of the landlord) has no retrospective operation on suits by under *raiyats* or non occupancy *raiyats* in which the cause of action arose before the passing of the Act MANJHOORI BIBI *v* AKEL MAHUMED (1913) **17 C W. N 889**

LIMITATION ACT (IX OF 1871)

———— s 21—*Act No IX of 1908, s 31—Limitation—Mortgage with possession—Realisation of rents and profits equivalent to receipt of interest as such under the terms of the mortgage* Under the terms of a mortgage deed executed in 1850 the mortgagee was to take possession of the mortgaged property and appropriate the rents and profits in lieu of interest The mortgagee remained in possession up to 1889 when he was dispossessed In 1910 he brought a suit for sale *Held*, that the realization of rents and profits in lieu of interest was equivalent to the receipt of interest as such under the terms of the mortgage and therefore under s 21 of Act IX of 1871 the mortgagee was entitled to compute limitation from the year 1889 Act XV of 1877 having by that time come into operation the plaintiff was in 1910 entitled to bring his suit within the limitation provided by s 31 of Act IX of 1908 INDARJIT *v* GAJADHAR SAHAI (1913) **I. L R 35 All. 270**

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 9.

See LIMITATION ACT (XV OF 1877), s. 19 AND SCH. II, ART 148.

I. L. R. 35 All. 227

——— s. 14—

See LIMITATION. I. L. R. 36 Mad. 482

——— *Plaint returned for presentation in proper Court—Power of Court to fix a period of time for such presentation—Exclusion of time.* For the purposes of determining limitation as governed by the provisions of s. 14 of Act XV of 1877, the date of instituting the suit must be held to be the date on which the plaint was filed in the Court having jurisdiction to try it, excluding only, for the purpose of calculating limitation, the period excluded under s. 14. Where a plaint which had been presented on the last day of the period of limitation, was subsequently returned by the Court for presentation within a week in the proper Court and was so presented five days later: *Held*, that the suit when so presented was barred by limitation as only the period during which the suit was pending in the Court without jurisdiction would be excluded under s. 14 of the Limitation Act. HARI DAS RAY *v.* SARAT CHANDAR DEY (1913)

17 C. W. N. 515

——— s. 19, Sch. II, Art. 148—*Acknowledgment, effect of—Acknowledgment by widow in possession of husband's estate—Suspension of limitation—Act XV of 1877, s. 9—Act XIV of 1859, s. 1, cl. 15—Res judicata—Contentions raised for the first time on appeal to His Majesty in Council—Practice of Privy Council.* In a suit brought by the appellant on the 4th of March, 1907, against the respondents for the redemption of a mortgage, dated the 2nd of January, 1842, made between the respective predecessors in title of the parties and in which no date for redemption was specified, acknowledgments of the mortgagor's right had been made by the widow and daughter of a former mortgagee, a predecessor in title of the respondents, which, the appellant contended, extended the period of limitation. *Held*, that the law of limitation applicable to the case was not Act XIV of 1859, the law in force at the date of the acknowledgments, but Act XV of 1877, which was in force at the time of the institution of the suit. Under Art. 148 of Sch. II to that Act the period of limitation prescribed for a suit to redeem a mortgage was 60 years from the time when the right to redeem accrued, and by s. 19 an acknowledgment to be effective must be "signed by the party against whom such right is claimed or by some person through whom he claims title." *Held*, that the respondents derived title through the last male owner, and not through his widow and daughter, who were therefore not competent under s. 19 to make an acknowledgment of the right of redemption so as to bind any interests except their own. To hold otherwise would be to extend the power of a Hindu female in possession of a limited interest to bind the estate to an extent which was not sanctioned by authority. An acknowledgment of liability only extends the period of limitation within which the suit must be brought, and does not confer title, and, with reference to s. 2 of Act XV of 1877, was not a "thing done" within the meaning of s. 6 of the General Clauses Consolidation Act (I of 1868). There was nothing in Art. 148 of Sch. II of Act XV of 1877 to justify a holding that by reason of the fusion of the interests of the mortgagor and mortgagee (which, it was alleged, took place between the years 1883 and 1898) the period of limitation, which began to run on the 3rd of January, 1842, was suspended, which would be deciding contrary to s. 9 of the Act: this suit not being one to which the proviso to that section applied. *Burrell* v. *Earl of Egremont, 7 Beav. 205,* distinguished. The present suit was not barred as *res judicata* by a former suit in 1904. With regard to contentions raised on this appeal which had not been raised before at any stage of the case, and consequently had not been considered by any of the Courts below, nor were even suggested in the reasons in the case of the appellant to England, their Lordships adhered to the established practice of the Board not to allow new cases to be made for the first time on appeal to His Majesty in Council. SONI RAM *v.* KANHAIYA LAL (1913)

I. L. R. 35 All. 227

——— Sch. II, Art. 35—

See HUSBAND AND WIFE.

I. L. R. 37 Bom. 393

——— Sch. II, Arts. 44, 91—

See EXECUTOR, SALE BY.

I. L. R. 36 Mad. 575

——— Sch. II, Arts. 48, 49—*Illegal distraint and consequent removal and misappropriation of crops—Suit for damages.* Where in execution of an illegal distraint, the defendant cut the crop standing on plaintiff's land and removed the same: *Held*, that a suit by the plaintiff for damages in respect of these acts was a suit in respect of "specific moveable property" within one or other of the two Arts. 48 and 49 of Sch. II of Act XV of 1877. *Hari Charan* v. *Hari Kar, 9 C. W. N. 367; I. L. R. 32 Calc. 459,* distinguished. *Sripati Sarkar* v. *Hari Kar, 12 C. W. N. 1090,* reversed. JADU NATH DANDUPAT *v.* HARI KAR (1913)

17 C. W. N. 308

——— Sch. II, Art. 106—*Suit for partnership account—Presumption of dissolution of partnership from facts of case—Cessation of annual accounts rendered yearly for many years and rendering of final account showing division of capital and revenue.* The question in this appeal which arose out of a suit brought in 1902 for a partnership account and to recover the plaintiff's share in the properties of a business carried on by them and the defendants, was whether the suit was barred by limitation, the defendants contending that there had been a dissolution of the

LIMITATION ACT (XV OF 1877)—*contd*

——— Sch II, Art 106—*concld*

partnership in 1891 which the plaintiffs denied *Held* (affirming the decision of the High Court) that when annual accounts of the partnership business which had been rendered year by year from 1868 to 1891, ceased in the latter year and, on 12th April 1891, a final account showing the division of both capital and revenue was made out, the defendants afterwards carrying on the business without any interference from the plaintiffs, the presumption was in favour of the dissolution of the partnership as at the definite date of the year when the account was thus closed And their Lordships were of opinion that these facts taken with the other acts and conduct of the parties, and the whole circumstances of the case which greatly strengthened the presumption made the inference in favour of the dissolution having occurred at the above date substantially conclusive The suit, therefore, not having been brought within three years from that date was barred by Art 106 of Sch II of the Limitation Act (XV of 1877) JOOPOODY SARAYYA *v* LAKSHMANA SWAMY (1913) I L R 36 Mad [P C] 185

——— Sch II, Art 120—

See AUCTION PURCHASER, SUIT BY
I L R. 40 Calc 187

——— *Attachment of wrong man's property—No suit filed—Subsequent sale of property under attachment—Fresh cause of action from date of sale—Art 120 applicable—Absence of suit questioning attachment no bar to subsequent suit on sale* Though attachment of a person's land as if it belonged to another, gives the owner a cause of action, on which he could have brought a suit, but did not yet the sale of the same at a later date is a fresh and greater invasion of his right and gives him a fresh cause of action on which he could sue within six years from the date of sale under Art 120 of the Limitation Act Though he might have sued after the attachment he was not bound to sue The sale though held in pursuance of the attachment was not a necessary consequence of it *Robert Skinner* v *Shanker Lal, I L R 31 All 10 (note)* followed *Per* CURIAM The attachment gives the judgment creditor certain rights in execution but the title to the property continues in the owner notwithstanding the attachment, and it so continues even if the owner's objection to the attachment be disallowed *Narasimha Rau* v *Gangaram, 18 Mad L J 590,* referred to ANANTHARAZU *v* NARAYANARAZU (1913) I L R 36 Mad 383

——— Sch II, Art 127—*Joint property—Exclusion of a co parcener—Knowledge of exclusion—Decree by another excluded co parcener for share by partition does not prevent time from running* Certain joint family property was in the possession of some of the co parceners (defendants Nos 1 to 3), who began to hold it adversely to the remaining co parceners from 1890 In 1895, defendant No 5, one of the excluded co parceners, sued all the co parceners to recover his share

LIMITATION ACT (XV OF 1877)—*contd*

——— Sch II, Art 127—*concld*

in the property by partition His share, which was one sixth in the property was decreed to him in 1898, and he recovered possession of it in due course In 1907 another of the excluded co parceners brought a suit to recover his share by partition of the property He sought to bring his suit within time by alleging that the possession of defendants Nos 1 to 3 became adverse only after 1898 The lower Courts held that the plaintiff was

suit with reference to their five sixths having been left to continue as before the property in their hands remained joint and that the judgment and decree of 1898 did not disturb as between them the previous state of things and stop the limitation that had begun to run as against the plaintiff from 1890 *Held*, by BATCHELOR, J concurring that the finding of fact against the plaintiff that he was excluded to his knowledge from enjoyment of joint property by defendants Nos 1 to 3 from 1890, was wholly independent of, and unaffected by, the decree of 1898 which only decided that the family and the property were joint and that the property was consequently partible BABAJI AKOBA *v* DATTU LAXMAN (1912)
I L R 37 Bom 64

——— Sch II, Arts 127, 142—*A co parcener in possession of joint lands on behalf of all co parceners—Alienation by the co parceners without knowledge of the rest—Adverse possession of his vendee* Certain lands belonging to the joint family of plaintiffs and defendant No 1 were in the possession of defendant No 1 on behalf of the family In 1880 he alienated them to defendant No 2 but remained in possession on executing a rent note in favour of the vendee The plaintiffs brought a suit in 1906 to recover by partition their share in the lands The defendant No 2 pleaded in defence his adverse possession of the lands from 1880 *Held*, that the possession by defendant No 1 before the alienation being for himself and his co parceners and being thus of a fiduciary character, it could not begin to be adverse to the co parceners in the absence of intimation conveyed by him to them that he intended to exclude them MALKAPPA *v* MUDKAPPA (1912)
I L R 37 Bom 84

——— Sch II, Arts 142, 144—*Sole owner permitting another, under mistake, to hold joint possession for more than 12 years—Suit to recover exclusive possession—Limitation—Consent—Acquiescence—Estoppel—Mistake—Co sharers, adverse possession as between—Unity of possession of tenants in-common, consequences of* Where A is the owner of an estate in which the disputed land is situated and A and B are joint owners

LIMITATION ACT (XV OF 1877)—*contd.*

——— Sch. II, Art. 142—*concld.*

in an adjoining estate, and the land in dispute has been held by *A* and *B* by mutual consent as part of their joint estate for a period of more than 12 years before suit in ignorance of their rights, limitation arises either by discontinuance of possession by *A* under Art. 142 or by adverse possession of *B* under Art. 144 of the Limitation Act. *Vasudeva* v. *Maguni, I. L. R. 24 Mad. 387*, referred to. *Per* JENKINS, C.J.—The mere fact of consent does not prevent possession being adverse. The test is whether the person who sets up adverse possession is able to show that he held for himself and if he did, the mere fact that there was acquiescence or consent on the part of the other person concerned would in circumstances like these make no difference. *Purshottam* v. *Sagaji, I. L. R. 28 Bom. 87*, referred to. *Per* CHAPMAN, J.—Art. 142 rather than Art. 144 of the Limitation Act applied to the case. DWARKA NATH CHOWDHURY *v.* ATUL SHIB BANERJEE (1913)

17 C. W. N. 595

——— Sch. II, Art. 144—*Adverse possession—"Possession of the defendant," meaning of, if includes possession of—Defendant's lessor—Nature of adverse possession which can be set up—Effect of s. 3.* The words "possession of the defendant" in Art. 144 cannot by reference to the definition in s. 3 be held to include the possession of another person, a co-defendant, still in possession under a different title. *Padajirai* v. *Ram Rav, I. L. R. 13 Bom. 160*, distinguished. The adverse possession of a defendant must be of the same nature as that sought by the plaintiff and the defendant cannot set up his possession as a permanent lessee as adverse in a suit by the plaintiff for possession as proprietor. *Umrunnessa* v. *Md. Yar Khan, I. L. R. 3 All. 24*, followed. Where the plaintiff brought a suit for possession of certain property purchased by him at an auction-sale within 12 years from the date of sale, but after the expiry of 12 years brought the defendant-appellant on the record on the ground that subsequent to the plaintiff's purchase he had been granted a permanent lease of the property by the original defendants, the previous owners who had wrongfully retained possession since the plaintiff's purchase: *Held*, that the defendant-appellant was not entitled to add the period of his lessor's adverse possession to his own, in answer to the plaintiff's suit. LAHURI BIBEE *v.* BEJOY CHAND MAHATAB (1913) . . 17 C. W. N. 748

——— Sch. II, Arts. 178, 179—*Article 179 applies to initiate proceedings—Previous orders in execution, effect of, as res judicata—Civil Procedure Code (XIV of 1882), attachment under, when ceases, a question of intention—Erroneous order on a question of law, when res judicata.* Previous orders passed in execution and allowing execution on a construction of a decree, as to mesne profits or as to interest or the like have the force of *res judicata*, though the later application be in respect of a different subject-matter. Thus if under

LIMITATION ACT (XV OF 1877)—*contd.*

——— Sch. II, Art. 178—*concld.*

the old Civil Procedure Code (Act XIV of 1882) attachment of several properties had been made, and more than three years after such attachment sale of some of those properties was ordered, the supposition that the attachment was then subsisting, that order to sell will act as *res judicata* when a subsequent application for sale is made within three years thereafter to sell other properties originally attached. Under the old Civil Procedure Code the question whether a particular attachment subsists at a certain time was a question of intention. *Ram Kripal* v. *Rup Kuari, I. L. R. 6 All. 269*, *Venkatanarasimha Naidoo* v. *Papammah, I. L. R. 19 Mad. 54*, and *Subbarama Ayyar* v. *Nagammal, I. L. R. 24 Mad. 683*, followed. The rule that an erroneous decision on a question of law has not the force of *res judicata* does not apply to such a case. *Palanippa Chettiar* v. *Savari Naidoo, 18 Mad. L. J. 548*, and *Mangalathammal* v. *Narayanasami Ayyar, I. L. R. 30 Mad. 461*, distinguished. It is well established that an application intended to revive and carry through a pending execution is not covered by Art. 179 of the Limitation Act (XV of 1877) as it is not an application to initiate a new execution. *Qamar-ud-din Ahmed* v. *Jawahir Lal, I. L. R. 27 All. 334*, and *Suppa Reddiar* v. *Avudai Ammal, I. L. R. 28 Mad. 50*, followed. The right to apply to continue execution in such cases accrues from day to day and will not be barred until three years have elapsed after the proceedings have ceased to be pending. So the application is not barred under Art. 178 either. *Chalavadi Kotiah* v. *Poloori Alimelammah, I. L. R. 31 Mad. 71*, followed. SUBBA CHARIAR *v.* MUTHUVEERAN PILLAI (1913)

I. L. R. 36 Mad. 553

——— Sch. II, Art. 179—

1. ——— *Execution of decree—Applications for execution—Applications when not "in accordance with law."* The plaintiff obtained a decree against the defendants. He sought to execute the decree by filing six *darkhasts* all within time. The lower Court held that the sixth *darkhast* was not filed in time, for the first five *darkhasts* could not be taken into consideration for purposes of limitation as they were not in "accordance with law" because every one of them sought relief or reliefs which on considering the merits of the *darkhasts*, the Court could not have granted. On appeal: *Held*, that the *darkhast* in question was in time, for the first five *darkhasts* were "in accordance with law" as each one of them claimed relief granted by and therefore within the decree and the question whether on a consideration of all the facts the Court could in the events that had happened grant the relief was only a question for trial on the merits. BANDO KRISHNA *v.* NARASIMHA (1912)

I. L. R. 37 Bom. 42

2. ——— *Execution of decree—Step-in-aid of execution—Application for time to obtain copies required by s. 238 of the Civil Pro-*

LIMITATION ACT (XV OF 1877)—*concld*

——— **Sch II, Art 179**—*concld*

cedure Code (*Act XIV of 1882*) In the course of proceedings to execute a decree the decree holder filed an application for time to obtain certified copies of extracts required by s 238 of the Civil Procedure Code 1882 The second application to execute the decree was filed more than three years after the date of the first application though it was within three years of the date of the application for time It was sought to bring the second application within time by relying on the application for time as a step in aid of execution *Held* that the second application to execute the decree was presented in time for the application for time to obtain certified copies required by s 238 of the Civil Procedure Code of 1882 was a step in aid of execution SHESHADASACHARYA *v* BHIMACHARYA (1912)

I L R. 37 Bom 317

LIMITATION ACT (IX OF 1908)

——— *s 2(8)*, **Sch I, Art 144**—

See ADVERSE POSSESSION

I L R 40 Calc 173

———**ss 3, 4 and 14**—*Filing suit in a wrong Court on the day of its re opening after recess—Expiry of lim tation during recess effect of—Meaning of prosecution in s 14— Court—in s 4 meaning of* According to s 14 of the Limitation Act it is only the period during which a suit is actually prosecuted in a wrong Court that can be excluded in favour of a plaintiff but not the period before the fil ng of the suit though the Court was then closed for recess So if the period of limitation for the suit expired during the period of recess of the wrong Court wherein the suit was filed on the day of its re opening the suit must be held to be barred It is only the period of closing of the proper Court in which the suit must be instituted that can be taken account of under s 4 *Abhoya*

... n which ... UBIAM ... by the ... Act are independent and cumulative MIRA MOHIDIN ROWTHER *v* NALLAPERUMAL PILLAI (1913)

I L R 36 Mad 131

——— **s 5**—

See PROVINCIAL INSOLVENCY ACT (III OF 1907) ss 22 46 AND 52

I L R 35 All 410

——— *Appeal presented out of time — Sufficient cause —Miscalculation of time by pleader—Appeal rejected—Discretion exercise of—Civil Procedure Code (Act V of 1908) s 2— Decree meaning of* A *bond fide* mistake committed by a pleader in calculating the period of limitation may constitute a sufficient cause within the meaning of s 5 of the Limitation Act Whether the miscalculation does constitute a sufficient cause in any particular case must be decided by the Court having regard to all the facts and circumstances of that case Where the Appellate Court refused to admit an appeal presented out of time because according to its view of the authorities a miscalculation by a pleader of the period of limitation was not a sufficient cause for not presenting the appeal in time within the meaning of s 5 of the Limitation Act *Held* that the decision could be reviewed on appeal as there ...

to advance substantial justice when no negligence nor inaction nor want of *bond fides* is imputable to the appellant RAKHAL CHANDRA GHOSE *v* ASHUTOSH GHOSE (1913)

17 C W N 807

——— **s 6 and Art 125**—*Widow s alienation—Right of several reversioners independent—Not questioned by deceased father for twelve years—Right of minor son to quest on after twelve years but with in three years of attaining majority* For the purpose of questioning an alienation made by a Hindu female possessing a limited estate one reversioner does not claim through another and consequently laches on the part of a father who died without instituting a suit within twelve years from the date of the alienation does not disentitle his son from filing a suit for the purpose even after twelve years after the alienation if he was a minor at the time and files the suit within three years of attaining majority S 6 and Art 125 of Limitation Act considered *Govinda Pillai* v *Thayammal I L R 28 Mad 57 Bhagwanta* v *Sukhi I L R 22 All 33 Abinash Chandra Majumdar* v *Hari Nath Saha 9 C W N 25 Sakyahani Ingle Rao Sahib* v *Bhavani Boi Sahib I L R 27 Mad 588* and *Chinna Veerayya* v *Lakshminarasimha 22 Mad L J 375* followed *Mullapudi Ratnam* v *Mullapudi Ramayya I L R 25 Mad 731* and *Chhaganram Astikram* v *Bai Motigavri I L R 14 Bom 512*, not followed *Chiruvolu Punnamma* v *Chiruvolu Perraju I L R 29 Mad 390* referred to *Krishnier* v *Lakshmiammal 18 Mad L J 275* distinguished VEERAYYA *v* GANGAMMA (1913)

I L R 36 Mad. 570

——— **s 10**—

See WAKF **I L R. 37 Bom 447**

——— **s 14**—*Plaint filed on last day ordered to be returned for presentation in another Court on a later date—Plaint actually returned later—Interval between if bars suit* Where a plaint which was filed in a wrong Court on the last day of limitation was subsequently ordered to be returned for presentation to the proper Court, but was not

LIMITATION ACT (IX OF 1908)—*contd.*

——— s. 14—*concld.*

actually returned till three days later, and was filed in the proper Court the day following. *Held,* that the suit was not barred by limitation. Where the final order is promulgated on a later date than that on which it was signed, the date of promulgation should be held to be the day on which the proceedings ended within the meaning of expl. I of s. 14 of the Limitation Act. *Abhoya Charan Chackrabartty* v. *Gour Mohan Dutt, 24 W. R. 26,* distinguished. MOHENDRA PROSAD SINGH *v.* NANDA PROSAD SINGH (1913)
17 C. W. N. 1043

——— s. 18—*Sale, application made after time to set aside—Fraud antecedent to sale, if may be proved.* Where upon an application by a judgment-debtor to set aside a sale on the ground of fraud, made more than 30 days after the sale, the Court refused to admit evidence of fraud antecedent to the sale, on the ground that such fraud was not material for the purposes of s. 18 of the Limitation Act: *Held,* that although proof of fraud antecedent to the sale does not necessarily indicate the continuance of that fraud subsequent to the sale, it may have an important bearing in the determination of the question whether there was fraud subsequent to the sale sufficient for the purposes of s. 18. The question of fraud should be considered as a whole. TOOKOO MONI DASI *v.* DWARKA NATH DRADA (1912) . **17 C. W. N. 478**

——— s. 19—

1. ——— *Acknowledgment of liability.* The following two letters were sent by firt and second defendants respectively to plaintiff's vakil (i) " Sir, 10th June, 1908. With reference to your letter of the 2nd instant, I request you to be so good as to furnish me with a copy of a statement of accounts." (ii) "Dear Sir, 18th June, 1908. With reference to your letter of the 2nd instant on behalf of landing contractor, Madras, I have to inform you that I wish to examine the accounts as my account does not show such an amount mentioned in your letter. I therefore request you will please forward the copy of the account or to instruct your client to send his *gumastah* with his account books." *Held,* that neither of the letters amounted to an acknowledgment of liability under the Limitation Act, s. 19. ANDIAPPA CHETTY *v.* ALASINGA NAIDU (1913)
I. L. R. 36 Mad. 68

2. ——— *Limitation—Acknowledgment—Requisites for valid acknowledgment. Held,* that an acknowledgment of a debt to be a valid acknowledgment within the meaning of s. 19 of the Indian Limitation Act, 1908, need not be addressed to the creditor, but may be made to some other person as, *e.g.*, by means of a deposition in Court. *Held,* also, that a statement in the form "the whole of Janki Prasad's mortgage money is owing," there being in existence at the time two mortgages held by Janki Prasad, must be taken to apply to both, in the absence

LIMITATION ACT (IX OF 1908)—*contd.*

——— s. 19—*concld.*

of evidence indicating a different signification. *Moniram Seth* v. *Seth Rupchand, I. L. R. 33 Calc. 1047,* and *Mylapore Iyasawmy Vyapoory Moodliar* v. *Yeo Kay, I. L. R. 14 Calc. 801,* referred to. MEGH RAJ *v.* MATHURA DAS (1913)
I. L. R. 35 All. 437

——— s. 20—*Limitation—Interest—Payment of part of interest due—Suit for foreclosure.* The word " interest " in s. 20 of the Limitation Act means interest or any part of the interest due. *Kollu* v. *Halki, I. L. R. 18 All. 95,* and *Anwar Husain* v. *Lalmir Khan, I. L. R. 26 All. 167,* distinguished. ABDUL AHAD *v.* MAHTAB BIBI (1913) . . . . **I. L. R. 35 All. 378**

——— s. 31—*Limitation—Mortgage—Suit on mortgage barred under Limitation Act of 1871—Mortgagee's rights not revived by present Act. Held,* that s. 31 of the Indian Limitation Act, 1908, cannot be construed as reviving rights already time barred under the Limitation Act of 1871. JAI SINGH PRASAD *v.* SURJA SINGH (1913)
I. L. R. 35 All. 167

——— s. 75—*Bond repayable by instalments the whole to become payable "on demand" on default in paying one instalment—Meaning of "on demand"—Waiver.* A bond repayable by instalments contained the following stipulation :—" in default of our making such payment also the amount that may be found due for all future drawings shall be paid in a lump on your demand." *Held,* that the cause of action for recovery of all the instalments would not arise until demand is made by the obligee in terms of the stipulation and that in consequence the whole amount did not become due merely on failure to pay an instalment. *Hanmantram Sadhuram* v. *Arthur Bowles, I. L. R. 8 Bom. 561,* followed. The words " on your demand " mean " when you require." Failure to make the demand will constitute a waiver of the right stipulated for. *Hurri Pershad Chowdhry* v. *Nasib Singh, I. L. R. 21 Calc. 542, 547,* and *Jadab Chandra Bakshi* v. *Bhairab Chandra Chuckerbutty, I. L. R. 31 Calc. 297,* dissented from. KARUNAKARAN NAIR *v.* KRISHNA MENON (1913) . . **I. L. R. 36 Mad. 66**

——— **Sch. I, Arts. 19, 23—**

See LIMITATION.
I. L. R. 40 Calc. 898

——— **Sch. I, Arts. 44, 91—**

See EXECUTOR, SALE BY.
I. L. R. 36 Mad. 575

——— **Sch. I, Arts. 62, 120—**

See CIVIL PROCEDURE CODE, 1882, s. 315 . . **I. L. R. 35 All. 419**

——— **Sch. I, Art. 75.**

——— *Bond—Option of suing for whole amount due on default of payment of in-*

LIMITATION ACT (IX OF 1908)—*concld*

——— Sch I, Art 75—*concld*

stalments—Limitation A bond payable by instalments gave to the creditor the option of suing for the whole amount due on default in payment of any instalment or of suing for the instalments separately Two instalments were paid, the third was not, and more than six years after default in payment of this instalment, nothing further having been paid on the bond, the creditor sued to recover the whole amount due stating that the cause of action arose on the date when the third instalment became due *Held*, that the suit was time barred. *Ajudhia* v *Kunjal, I L R 30 All 123*, distinguished AMOLAK CHAND v BAIJ NATH (1913) **I L R 35 All. 455**

——— Sch I, Art. 89—

See ACCOUNT, SUIT FOR
I L R 40 Calc 108

——— Sch I, Arts 91, 120—

——— *Limitation—Suit for declaration that nominal lessee is not the beneficial lessee but merely benamidar for the plaintiff* *Held*, that a suit for declaration that the defendant, whose name appeared in a certain lease as lessee, had no interest under the lease and that the person really interested in the lease was the plaintiff, was governed as to limitation by Art 120 and not by Art 91 of the first schedule to the Indian Limitation Act 1908, the cause of action accruing to the plaintiff when his position as a lessee was challenged BASANT LAL v CHHIDAMMI LAL (1913) **I L R 35 All 149**

——— Sch I, Art. 95—*Relief not claimed distinctly on the ground of fraud—Executor—Suit without probate—Decree—Limitation from the date of testator's death—Fraud in the performance of contract, no ground for rescission—Partnership—*

tion where on the face of the plaint no equitable relief is claimed on the ground of fraud

in the performance of a contract, apart from its making, is no ground for rescission and restoration of the parties to the position in which they were

of the testator's share in a partnership business by the surviving partners and subsequently to a transfer of the same to another business In an action brought by one of the testator's sons as administrator against the surviving partners, for

LIMITATION ACT (IX OF 1908)—*contd*.

——— Sch. I, Art 95—*concld*

an account of all the assets of the testator at the time of his death retained and employed by the defendants in their business *Held*, dismissing the suit, that the testator's widow was perfectly competent as his executrix to enter into the

NAOROJI (1912) **I L R. 37 Bom. 158**

——— Sch I, Arts 97, 62—*Failure of consideration—Sale of land—Purchaser stepping into possession—Loss of possession at the suit of a third party, the real owner—Suit to recover purchase money from vendor—Limitation* In 1903, the defendant sold certain land to the plaintiff under the *bona fide* belief that he was entitled to do so and placed the plaintiff in possession In 1909, the true owner of the land recovered possession thereof from the plaintiff In a suit by the plaintiff to recover the purchase money from the defendant, the Court of the first instance held that the suit was barred by limitation under Art 62 of the First Schedule to the Limitation Act (IX of 1908), for the purchase money paid to the defendant was money had and received to the plaintiff's use On appeal it was held that the claim was within time, under Art 97 of the Act On appeal to the High Court *Held*, that the suit was governed by Art 97, inasmuch as possession given under the purchase to the plaintiff was an existing consideration as long as it lasted *Hanuman Kamat* v *Hanuman Mandur, I L R 19 Calc 123* followed NARSING SHIVBAKAS v PACHU RAMBAKAS (1913) **I L R 37 Bom 538**

——— Sch I, Art 110—*Madras Rent Recovery Act (VIII of 1865) ss 9 and 10—When rent ascertained and payable* Rent is payable, within the meaning of Art 110 of Sch I of the Limitation Act only when it is ascertained When proceedings are taken by the landlord under s 9 of the Madras Rent Recovery Act after the end of the *fasli* to enforce acceptance of a *patta* tendered within the *fasli*, the landlord has to await an adjudication under s 10 of the Act and limitation begins to run in respect of a suit for rent only from the date of such adjudica

——— Sch. I, Arts 110, 116—*Registered lease—Suit to recover arrears of rent—Limitation* Art 116, Sch I, of the Limitation Act (IX of 1908) applies to suits for debts or sums certain due upon registered instruments LALCHAND NANCHAND v NARAYAN HARI (1913)
I. L R. 37 Bom. 656

LIMITATION ACT (IX OF 1908)—*contd.*

——— Sch. I, Art. 118—*Hindu Law—Adoption—Suit questioning the validity of adoption—Limitation—Adoption of an orphan—Entries in Revenue register.* A suit questioning the validity of an adoption would be time-barred if not brought within six years under Art. 118, Sch. I of the Limitation Act (IX of 1908). *Shrinivas* v. *Hanmant, I. L. R. 24 Bom. 260*, followed. *Thakur Tirbhuwan Bahadur Singh* v. *Raja Rameshar Baksh Singh, L. R. 33 I. A. 156*, and *Umar Khan* v. *Niaz-ud-din Khan, L. R. 39 I. A. 19*, explained and distinguished. The adoption of an orphan is not valid in law. The Collector's Register is purely for the purposes of Government Revenue and its entries are not evidence of title. SHRINIVAS SARJERAV *v.* BALWANT VENKATESH (1913) . . . . I. L. R. 37 Bom. 513

——— Sch. I, Art. 120.

See NORTH-WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT (XV OF 1883), s. 10 . I. L. R. 35 All. 308

——— Sch. I, Art. 128—*Execution of decree—Limitation—Step in aid of execution—Application for transfer of decree—Civil Procedure Code (1882), s. 223. Held*, that an application made to the Court passing a decree to transfer it for execution to another Court is an application to take a step in aid of execution within the meaning of Art. 182 of the first schedule to the Indian Limitation Act, 1908. *Chandra Nath Gossami* v. *Guroo Prosunno Ghose, I. L. R. 22 Calc. 375*, followed. TODAR MAL *v.* PHOLA KUNWAR (1913) I. L. R. 35 All. 389

——— Sch. I, Art. 132—*Limitation—Malikana—Suit for malikana—Decree asked for against property charged.* Where a plaintiff sued for the recovery of *malikana* for 11 years and claimed a decree against the property on which the *malikana* was charged, it was *held* that the suit was within time having regard to Art. 132 of the first schedule to the Indian Limitation Act, 1908. *Kallar Roy* v. *Ganga Pershad Singh, I. L. R. 33 Calc. 998*, distinguished. SHAIDA ALI *v.* PHULLO (1913) . . . . I. L. R. 35 All. 185

——— Sch. I, Arts. 138, 144—*Execution of decree—Successive purchasers of same property—Suit by subsequent purchaser to recover from earlier purchaser—Limitation.* Art. 138 of the Limitation Act only applies to suits in which the auction-purchaser is the plaintiff and the judgment-debtor or some one claiming through him, is the defendant. *Ram Lakhan Rai* v. *Gajadhar Rai, I. L. R. 34 All. 224*, and *Khiroda Kanta Roy* v. *Krishna Das Laha, 12 C. L. J. 378*, referred to. BHAGWANT SINGH *v.* BHOLI SINGH (1913) I. L. R. 35 All. 432

——— Sch. I, Art. 154.

See SANCTION FOR PROSECUTION. I. L. R. 40 Calc. 239

LIMITATION ACT (IX OF 1908)—*contd.*

——— Sch. I, Art. 181—

See EXECUTION OF DECREE. I. L. R. 35 All. 178

——— Sch. I, Art. 182—

1. ——— ——— *Suit for account—Court-fee paid months after date of judgment—Starting point of limitation—Step in aid of execution.* For the purpose of Art. 182 of the first schedule of the Limitation Act, the date on which the Court passed its judgment is the "date of the decree," and the fact that the Court-fee required to be paid in order to validate the decree (which was passed in a suit for account) was not put in till some months later, did not give a different starting point for computing the period of limitation. The payment of the Court-fee did not constitute a step in aid of execution within the provisions of the Limitation Act. BHAJAN BEHARY SHAHA *v.* GIRISH CHANDRA SHAHA (1913) 17 C. W. N. 959

2. ——— *Execution of decree of Presidency Small Cause Court—S. 48, Civil Procedure Code (Act V of 1908) not applicable to such Court—Transfer to City Civil Court for execution of a decree more than 12 years old—Art. 182 applicable—S. 48 applicable to City Civil Court, no bar.* Although a decree may be transferred by the Court which passed it to another Court, for execution, the law of limitation applicable for its execution is that applicable to the decrees of the former Court, *i.e.*, of the Court which passed them. A different rule will lead to anomalous consequences. A decree of the Presidency Small Couse Court (Madras) passed in 1896 was transferred for execution to the City Civil Court. S. 48, Civil Procedure Code, not being applicable to the Court of Small Causes : *Held*, that an application for the execution presented to the City Civil Court in 1910 was not barred, the article applicable to the cause being Art. 182 of the Limitation Act; that the fact that s. 48 of the Civil Procedure Code was applicable to the City Civil Court, was immaterial. *Sambasiva Mudaliar* v. *Ponchanada Pillai, 17 Mad. L. J. 441, I. L. R. 31 Mad. 24, Tincowrie Dawn* v. *Debendro Nath Mookerjee, I. L. R. 17 Calc. 491*, and *Jogemaya Dassi* v. *Thackumani Dassi, I. L. R. 24 Calc. 473*, followed. *Her Highness Ruckmaboye* v. *Lulloobhoy Mottichand, 5 Moo. I. A. 234*, not applicable. *Per* CURIAM: A transfer of a decree by the Court which passed it to another Court does not make the decree one passed by the latter Court. Even after transfer the control of the execution is still left in several respects in the hands of the Court which passed the decree, *e.g.*, recognition of assignment, application for execution against legal representative, stay of execution, issuing precepts and certificate of non-execution or partial execution, etc. SREE KRISHNA DOSS *v.* ALUMBI AMMAL (1913) . . I. L. R. 36 Mad. 108

3. ——— *Part of a decree containing unascertained amount—Execution of whole decree three years after ascertainment—No*

LIMITATION ACT (IX OF 1908)—*contd*

——— **Sch. I, Art. 182—*contd.***

bar—Policy of Limitation Act as to period of limitation for execution of decrees For the purposes of limitation regarding execution of a decree, the decree must be taken as a whole and ordinarily when a portion of the decree is not executable by reason of the fact that the amount due under that portion is left to be determined at a future time, limitation begins to run as regards execution of the whole decree only from the time of ascertainment of the amount left undetermined, even though it might have been open to the party to have executed the other portions earlier *Haji Ashfaq Hussain* v *Lala Gouri Sahai, 13 C L J 351, I L R 33 All 264, Ratnachalam Ayyar* v *Venkatarama Ayyar, I L R 29 Mad 46* and *Krishnan* v *Nilakandan, I L R 8 Mad 137* [illegible]

Sahai v *Ashfak Husain, I L R 29 All 623,* applied *Subramanya Chettiar* v *Alagappa Chettiar, I L R 30 Mad 268* and *Nepal Chandra Sadookhan* v *Amirta Lall Sadookhan, I L R 26 Calc 888,* referred to C M A No 74 of 1913 (unreported) not followed A decree in a second appeal, dated 30th July 1906, was as follows —"Appellant (defendant) do pay respondent (plaintiff) Rs 64 11 4 for his costs in this second appeal, Rs 78 3 7 for his costs in the memorandum of objections and also his costs in the lower Appellate Court which will be ascertained and taxed by that Court" The costs in the lower Appellate Court were ascertained by that Court on 1st December 1906 The application for the execution of the whole decree was made on 7th August 1909, *i e*, more than three years after the decree in second appeal but within three years after ascertainment by the lower Appellate Court *Held,* that the execution of the decree was not barred The policy of the Limitation Act in the case of execution of decrees is to lay down a simple rule and to treat the decree as a whole except when the decree itself directs that different portions of the relief granted are to be rendered by the defendant to the decree holder at different times *Per* CURIAM Under Art 182, there is only a single starting point, where there has been an appeal, review or amendment, although it might be open for a decree holder to apply for the execution of a part of the decree before proceedings in appeal, review or amendment have terminated VYDIANATHA AIYAR *v* SUBRAMANIA PATTER (1913)

I L R 36 Mad 104

4 ——— *Revision to the High Court—Order in, not giving any fresh starting point for execution of original decree—Effect of reversal or modification in revision—"Appeal," meaning of, in Limitation Act—Letters patent appeal from revisions, no "appeal"* An order of the High Court passed in the exercise of its revisional powers is not an order on an "appeal" within the meaning

LIMITATION ACT (IX OF 1908)—*concld*

——— **Sch I, Art. 182—*concld***

of Art 182, sub cl (2), so as to create a fresh starting point for the calculation of limitation *Per* CURIAM Unlike the word "appeal" in ss 15 and 39 of the Letters Patent, the word "appeal" in the Limitation Act is used in the narrower sense so as to exclude a revision, this is clear from the three classifications in the Limitation Act, *viz*, 'suits, appeals and applications" which last include applications for revision If the High Court interferes on revision, either there is a decree passed by the High Court which may be executed under the first clause of Art 182 or the case is sent down with a direction to the lower Court to amend its decree The latter appears to be the regular course and in such event there is no room to employ any sub clause other than sub cl (*1*) or the new sub cl (*4*) Where a revision petition is simply dismissed, no fresh starting point of limitation arises When the order appealed against cannot give any fresh starting point (*viz*, the order in the revision petition) an order in a Letters Patent appeal therefrom, cannot give one, as if it were an appeal within the meaning of Art 182 *Chappan* v *Moidin Kutti, I L R 22 Mad 68, Secretary of State for India in Council* v *British India Steam Navigation Company, 15 C W N 848,* and *Harish Chandra Acharja* v *Nawab Bahadur of Murshidabad, 15 C W N 879,* distinguished Judgment of WALLIS, J confirmed SUBRAMANIA PILLAI *v* SEETHAI AMMAL (1913) **I. L R. 36 Mad. 135**

——— **Sch I, Art 182, cl. (*5*)—**

——— *Decree—Execution—Step in aid of execution—Application for certificate under Succession Certificate Act (VII of 1889)* An application by the representative [illegible]

LIS PENDENS.

See TRANSFER OF PROPERTY ACT (IV OF 1882), s 52

I. L R 37 Bom 427, 621

LORRY (HAND-DRAWN)

See PUBLIC CONVEYANCES ACT (BOM ACT VI OF 1863), s 1

I L. R. 37 Bom 374

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MADRAS ACTS

——— **1865—VIII**

See RENT RECOVERY ACT, MADRAS.

MADRAS ACTS—*concld.*

——— 1884—IV.

See MADRAS DISTRICT MUNICIPALITIES ACT.

——— 9 5—III.

See HEREDITARY VILLAGE OFFICES ACT, MADRAS.

——— 1900—I.

See MALABAR TENANTS' IMPROVEMENT ACT.

——— 1903—I.

See PLANTERS' LABOUR ACT, MADRAS.

——— 1908—I.

See MADRAS ESTATES LAND ACT.

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884).

——— s. 10—

See RIGHT OF SUIT.

I. L. R. 36 Mad. 120

——— s. 191—*No right to farm slaughtering fees—Contract of farming such fees void and unenforceable—Contract Act, ss. 11 and 23—Powers of Corporations to contract.* Farming out, by a municipality, of its right to collect fees on the slaughter of animals, which the municipality is entitled to levy under s. 191 of Madras District Municipalities Act (IV of 1884), is unauthorized and *ultra vires.* A contract of lease which has the effect of farming out such a right is void and unenforceable under ss. 11 and 23 of the Contract Act (IX of 1872) as being beyond the competency of the Municipal Corporation to enter into, and therefore prohibited. *Held,* that any amount due to the municipality under such a contract cannot be recovered. Decision of WALLIS, J., in *Corporation of Madras* v. *Musthan Sait* [*C. [S. No. 244 of 1907]; 21 Mad. L. J., 788,* and *Marudamuthu Pillai* v. *Rangasami Moopan, I. L. R. 24 Mad. 401,* applied. Halsbury's Laws of England, Vol. VIII, article 805, Corporation's Title, referred to. *Abdulla* v. *Mammod, I. L. R. 26 Mad 156,* distinguished. *Per* CURIAM: The right of farming out is not necessary to the exercise of the right of levying as such fees may be naturally and easily collected by Municipal subordinates. The fact that there is an express power to farm out tolls negatives an implied power to farm out other kinds of fees. The fact that the Municipal Account Code contains provisions for the farming out of slaughtering fees and other taxes besides tolls is no guide to the interpretation of the Act in this respect. *Quære:* Whether s. 11 of the Contract Act is not exhaustive and does not deal competency of a corporation to contract? MUNICIPAL COUNCIL, KUMBAKONAM *v.* ABBAHS SAHIB (1913)

I. L. R. 36 Mad. 113

——— s. 279—

See RIGHT OF SUIT.

I. L. R. 36 Mad. 373

MADRAS ESTATES LAND ACT (I OF 1908).

——— ss. 3 (*10*), 19, 189—

See RENT . . I. L. R. 36 Mad. 7

——— ss. 3, 53, 189 and Sch. A, Art. 8—*Suit for cist, local cess, village cess by an ijaradar—Maintainability only in Revenue Court—Exchange of patta and muchilika not necessary for recovery of rent by suit under Estates Land Act—'Ijaradar' and 'Rent,' definitions of—Article 13 of schedule of the Provincial Small Cause Courts Act (IX of 1887).* A suit by an ijaradar of a share of a village governed by the Estates Land Act (Madras Act I of 1908), for recovery of cist, local cess and village cess due by a ryot is cognisable by virtue of s. 189 and schedule A, art. 8 of the Act only by a Revenue Court and not by a Small Cause Court, as all the above items sought to be recovered are by s. 3 of the Act included in the term 'rent' and as an 'ijaradar' is according to s. 3 (*5*) of the Act a 'landholder' being entitled to collect rent by virtue of a transfer from the owners. No exchange of patta and muchilika is necessary under the Estates Land Act for recovery of rent by suit; the same being necessary according to s. 53 only in case where the landholder wishes to distrain or sell the ryot's movables or his holding. It is wrong to hold that article 13 of the schedule to the Provincial Small Cause Courts Act (IX of 1887) applies to a suit for land cess or village cess under the above circumstances. Second Appeal No. 680 of 1910 (unreported), followed. PERRAJU GARU *v.* SUBBARAYUDU (1913)

I. L. R. 36 Mad. 126

——— s. 185—

See EVIDENCE . I. L. R. 36 Mad. 168

MAGISTRATE.

See PRACTICE . I. L. R. 37 Bom. 144

——— duties of—

See ATTACHMENT . I. L. R. 40 Calc. 105

MAGISTRATE, JURISDICTION OF.

See DISPUTE CONCERNING LAND.

I. L. R. 40 Calc. 982

MAHA-BRAHMAN.

Agreement as to distribution of offerings—Construction of agreement. The members of a family of Maha-Brahmans entered into an agreement amongst themselves whereby certain members of the family were to take the offerings made on certain days of the month, and the other members of the family the offerings made on the other days. *Held* by BANERJI and LYLE, *JJ.* (RICHARDS, *C.J.* dissenting), that the effect of such an agreement was that if an offering was made to a member of the family on a day which belonged to the other branch, he was bound to account for it to the branch to which the day belonged. *Per* RICHARDS, *C.J.*—Such an agreement as above described

MAHA-BRAHMAN—*concld*

would not prevent a person who wished to do so from making a special individual gift to a member of the family even on a day which was appropriated by the agreement to the other branch *Doorga Pershad* v *Budree, 6 N W P H C* 189, 191, and *Oochi* v. *Ulfat, I. L R 20 All 234*, referred to SONA DEI v FAKIR CHAND (1913) . . . . . I L R 35 All. 412

MAHANT.

See AGRA TENANCY ACT (II OF 1901), s 11 *et seq* I. L R 35 All 474

MAHOMEDAN FAMILY

See MORTGAGE . I. L. R 40 Calc 378

MAHOMEDAN LAW.

See CIVIL PROCEDURE CODE, 1908 s 92 (*1*) . . . . I. L. R 35 All. 98

MAHOMEDAN LAW—ENDOWMENT.

———*Endowment—Creation of endowment —Wakf by dedication or user—Graveyard, land used as—Presumption of ancient origin of shrine and burial place—Panjab Land Revenue Act (XVII of 1887), s 44—Entry of ownership in record of rights at settlement* In this case the Judicial Committee (affirming the decision of the

of Wards) was entered as owner Their Lordships said "It would seem that he was properly entered as owner, being trustee and custodian of the shrine of the saint Mai Pak Daman, and being or claiming to be the recognised head of the Mahomedan community in Multan;" and *held*, that, under s. 44 of the Punjab Land Revenue Act (XVII of 1887), the entry not having been

MAHOMEDAN LAW—ENDOWMENT—*concld.*

disproved, must be presumed to be correct COURT OF WARDS *v.* ILAHI BAKHSH (1912) I. L R. 40 Calc. 297

MAHOMEDAN LAW—GIFT.

———*Gift to a Mopla governed by Mahomedan Law on his marriage not void on his wife's death or divorce—No reverter to donor.* Under the Mahomedan Law a girl when married passes over to her husband's family and there is no obligation on the members of her natural family to maintain her after her marriage, even

governed by Marumakkatayam Law. *Mariyam* v *Abdulla* [Second Appeal No 1746 of 1895 (unreported)], referred to PAKRICHI *v* KUNHACHA (1913) . . I L. R 36 Mad. 385

MAHOMEDAN LAW—HUSBAND AND WIFE

See CONTRACT ACT (IX OF 1872), s. 25. I L R. 37 Bom. 280

MAHOMEDAN LAW—INHERITANCE.

——— *Family custom at variance with the law, if may be proved—Bengal, N.-W. P and Assam Civil Courts Act (XII of 1887), s 37* Where in a suit by a Mahomedan lady against her brothers for recovery of her share in their father's property, the defendants having set up the plea that according to family custom female descendants could not inherit in the presence of male descendants, the Courts in India refused to admit evidence in support of the alleged custom on the ground that evidence of custom at

custom should be admitted ISMAIL KHAN *v.* SHEOMUKH RAI (1912) . . 17 C. W. N. 97

MAHOMEDAN LAW—MAINTENANCE

——— *Cutchi Memons—Minor son, right of, to sue father for maintenance—Extent of maintenance properly grantable where the custody of the minor child is withheld from the father —Maintenance not to be charged on property devolving on the father from his father—Cutchi Memon's son can claim no distinct interest in his father's property* The plaintiff, a minor under the age of seven years, sued his father for maintenance and prayed that such maintenance should be a charge on the defendant's share in certain property left by the defendant's father. The plaintiff was the defendant's son by a wife divorced at the date

MAHOMEDAN LAW—MAINTENANCE —*concld.*

of the suit. The parties were Cutchi Memons. *Held*, that the rights of the plaintiff must be determined by Mahomedan law and that under Mahomedan law a minor son was entitled to sue his father for maintenance even though the father was not entitled to claim the custody of the child and such custody was withheld from him. *Held*, however, that such maintenance should amount only to bare subsistence for the son and not to maintenance according to the condition in life of the father. Such maintenance could not be made a charge on the property left by the defendant's father as the parties, being Cutchi Memons, were governed by Mahomedan law except with regard to inheritance and succession. MAHOMED JUSAB *v.* HAJI ADAM (1911)

I. L. R. 37 *Bom.* 71

MAHOMEDAN LAW—WAKF.

See WAKF . **I. L. R. 37 Bom. 447**

1. ——————*Subsequent failure of title of waqif—Right of mutawalli to sue on indemnity bond executed in favour of waqif as purchaser—Right of plaintiff to shift basis of claim during suit—Practice.* *A* purchased a village, the vendors giving him an indemnity bond in case he should be dispossessed. *A* then made a wakf of the property purchased, naming himself as mutawalli and after him his son *M*. *A* lost the property as the result of a suit, and subsequently (*A* meanwhile having died) *M* sued as mutawalli to enforce the terms of the indemnity bond. *Held*, that the wakf was invalid, and that *M* could not be permitted to change the character of the suit by claiming as one of the heirs of *A*. *Per* CHAMIER, *J.*—Even if the wakf was valid, the mutawalli was not entitled to maintain the suit in the absence of a transfer to him as such of the vendee's rights under the indemnity bond. MASIH-UD-DIN *v.* BALLABH DAS (1912) . . **I. L. R. 35 All. 68**

2. ——————*Wakf—Dedication subject to annuities payable to the members of the settlor's family.* Where a *wakfnama* provided that about two-thirds of the income of the property were to be paid as allowances to the wife and children of the settlor and only about a third was to be spent for religious and charitable purposes, and it was further provided that the allowances to the wife and children would have to be reduced in the event of the income of the estate being reduced, but there was no provision that the amount to be spent for religious and charitable purposes was to be reduced for any reason though the amount might be increased with the increase of the income of the estate: *Held*, that the wakf was valid under the Mahomedan law. GHANI MIA *v.* ADAK PATARI (1913) . **17 C. W. N. 1018**

MAHOMEDAN LAW—WORSHIP.

——————*Wakf—Right of Mahomedans to worship in mosques —Suit by individual Mahomedans whose right is infringed —Civil Procedure Code, 1908, O. I, r. 8.* Every Mahomedan who has a right to use a mosque for purposes of devotion, is entitled to exercise such right without hindrance and is competent to maintain a suit against anyone who interferes with its exercise, but, if he brings his suit in his personal capacity and not on behalf of the whole Mahomedan community, the decision will be binding only as between the plaintiff and the defendant and cannot be taken advantage of by, or be binding on, the Mahomedan community in general. *Jawahra* v. *Akbar Husain, I. L. R. 7 All. 178*, and *Dasondhay* v. *Muhammad Abu Nasar, I. L. R. 33 All. 660*, followed. RAM CHANDRA *v.* ALI MUHAMMAD (1913)

I. L. R. 35 All. 197

MAINTENANCE.

See MAHOMEDAN LAW—MAINTENANCE.
I. L. R. 37 Bom. 71

See MALABAR LAW.
I. L. R. 36 Mad. 593

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 52 . **I. L. R. 37 Bom. 621**

—————— **Marumakkathayam, law of—**

See MALABAR LAW.
I. L. R. 36 Mad. 593

—————— **separate—**

See ALIYASANTANA LAW.
I. L. R. 36 Mad. 203

—————— **separate, when entitled to—**

See MALABAR LAW.
I. L. R. 36 *Mad.* 591

MAINTENANCE GRANT.

See EXECUTION OF DECREE.
I. L. R. 40 Calc. 623

MAJORITY.

—————— **age of—**

See MAJORITY ACT (IX OF 1875), s. 3.
I. L. R. 35 All. 150

MAJORITY ACT (IX OF 1875).

—————— **s. 3—**

——————*Guardian and minor—Effect of appointment of Hindu widow as guardian of her minor sons—Sale of minor's property.* A Hindu died leaving a widow and two minor sons. The widow was appointed in 1890 guardian of the two sons, and in 1891 obtained sanction from the District Judge for the sale of half of the property of the minors. In 1906, the widow and the elder son, who had then attained majority, sold part of the property of the sons amounting to somewhat less than half. Within three years of his coming of age the younger son sued for a declaration that the sale of 1906 and a mortgage executed in 1902 were not binding on his interest in the pro-

MAJORITY ACT (IX OF 1875)—*concld.*

——— s. 3—*concld.*

perty purporting to be dealt with thereby. *Held*, (i) that the appointment of the mother as guardian had the effect of prolonging the minority of both sons until they reached the age of twenty-one years; and (ii) that the sanction of the Judge given in 1891 could not validate a sale which was not made until 1906 *Gharib ullah* v *Khalik Singh, I. L R. 25 All 407*, distinguished SHAMI NATH SAHI *v* LALJI CHAUBE (1913)
I. L. R. 35 All. 150

MAKAN.

See RES JUDICATA
I. L R. 37 Bom. 224

MALABAR LAW.

1 ———*Karamkari tenure in South Malabar—Alienation by tenure holder, effect of, even in the absence of clause for re entry* A holder of land on *Karamkari* or *Karaimakari* tenure in South Malabar has only a heritable or permanent right of cultivation but not a right of alienation, which event puts an end to the tenure, and the landlord entitled to the reversion is entitled to possession thereupon even in the absence of an express provision for re entry: Moore's 'Malabar Law and Custom' page 308, referred to *Parameshri* v *Vittappa Shanbaga, I L R 26 Mad 157*, and *Netrapal Singh* v *Kalyan Das, I. L R 28 All 400*, distinguished *Obiter* A *Karamkari holder* in North Malabar has no heritable right at all ACHUTHA MENON *v* SANKARA NAIR (1913) . . **I. L R 36 Mad 380**

2 ———*Want of harmony among some members—Separate living of one—When entitled to separate maintenance* A junior member of a Malabar tarwad leaving the tarwad house on the ground that he or she does not feel quite comfortable there, or is not able to live there in complete harmony with others so as to ensure happiness, is not entitled to separate maintenance if he or she was responsible for the discomfort complained of When a junior member will be entitled to separate maintenance, considered KUNCHI *v* AMMU (1913)
I. L. R. 36 Mad 591

3. ———*Marumakkathayam law of maintenance—Wife living in her husband's house, leaving* [illegible] *from her tarwa*[illegible]
law, a wife [illegible]
band's house [illegible]
tarwad, in the absence of any waiver to claim the same, as leaving the tarwad house to [illegible]

[illegible] kathayam law of maintenance is the same as the Aliyasanthana law prevailing in South Canara MUTHU AMMA *v* GOPALAN (1913)
I. L. R 36 Mad. 593

MALABAR TENANTS' IMPROVEMENTS ACT (MAD. I OF 1900).

——— ss. 5, 6, 9 to 18 and 19—*Right to compensation—Contract to the contrary, made before 1886, effect of—Distinction between restriction of right to make improvements and of right to the value of improvements—Validity of each restriction* Under the provisions of the Malabar Tenants' Improvements Act (Madras Act I of 1900), a tenant is entitled to the full value of his improvements according to the rates provided in ss 9 to 18; s 19 does not cut down his right under ss 5 and 6 to the value of his improvements according to the rates prescribed in the Act even where a contract was entered into before 1st January 1886, limiting his right with respect to the amount of compensation claimable by him Accordingly a restrictive provision in a document limiting the amount of compensation cannot be enforced But contracts made prior to January 1886 limiting the right to make improvements are not affected by s 19, and are valid *Kozhikot Pudiya Kovilagath Sreemana Vikraman* v *Chundayil Modathil Ananta Patter, I L R 34 Mad 61*, followed. *Held*, on a construction of the following provision in a *kanom* deed of 1884, "If I make chamayams (or buildings) thereon exceeding Rs 25 in value I shall only remove and take them at the time of surrender and shall not demand the value of improvements therefor," that the meaning of the clause was not to restrict the *kanomdar* from building but to restrict his right to the amount of compensation if he built, to Rs 25, if he is content to take it, regard being had to the absence of any [illegible]

always possessed to remove any improvements made by him *Angammal* v *Aslami Sahib, 21 Mad L J 891*, referred to PARU AMMA *v* KUNHIKANDAN (1913) **I L R 36 Mad. 410**

MALICIOUS ARREST

See LIMITATION **I. L. R. 40 Calc. 898**

MALICIOUS PROSECUTION.

1 ———*What has to be proved—Onus on plaintiff—What amounts to malice—Recklessness in what, amounts to malice* In a suit for damages for malicious prosecution it is not on the defendant to show that there was reasonable and probable cause but on the plaintiff to prove its absence All that the defendant has to be satisfied about is that there is reasonable [illegible]

coming to the conclusion that the Court would convict him of it Carelessness on the part of the defendant in deciding whether there was reasonable and probable cause would not amount to malice, and both malice and absence of reasonable and probable cause have to be proved. If a man is reckless, whether the charge be true or false, that might amount to malice, but not

MALICIOUS PROSECUTION—*contd.*

recklessness in coming to the conclusion that there was reasonable and probable cause. What would amount to reasonable and probable cause is a question of fact. VYDINADIER *v.* KRISHNASWAMI IYER (1913) . **I. L. R. 36 Mad. 375**

2. ——————— *Suit for damages—Onus—Plaintiff, if must prove innocence—Judgment of discharge by Criminal Court, if conclusive.* The plaintiff in a suit for damages for malicious prosecution has, amongst other matters, to prove his innocence, if only to establish that the prosecution was commenced maliciously and without reasonable and probable cause. The finding in the criminal case acquitting or discharging him is not conclusive on the matter. *Per* BOWEN, *L. J.*, in *Abrath v. North Eastern Railway Co.*, *11 Q. B. D. 440, 455*, approved. *Gunesh Dutt Singh v. Mugneeram Chowdry, 17 W. R. 283, Cotra v. Peiris, [1909] App. Cas. 549,* referred to. MUCHI OSTA *v.* HORSMUL MARWARI (1912) . . . . . **17 C. W. N. 434**

3. ——————— *Suit for, when lies—Criminal Procedure Code, prevention of offences, provision for—Malicious proceedings under such provisions, if sufficient basis for suit—"Prosecution," meaning of.* It is not that an action for damages for malicious prosecution lies only when the original proceeding was a "prosecution" in the sense in which the term is used in the Code of Criminal Procedure; it is not essential that the original proceeding should have been of such a nature as to render the person against whom it was taken liable to be arrested, fined or imprisoned. Where there has been a deliberate abuse of the process of the Criminal Court and salutary provisions framed by the Legislature to secure the prevention of offences have been utilised maliciously and without reasonable and probable cause for the harassment of the plaintiff who has thereby suffered damage in reputation and property, an action for malicious prosecution or malicious abuse of judicial process is maintainable. *Per* MOOKERJEE, *J.*—An action for maliciously putting the law in motion lies in all cases where there is concurrence of the following elements: (i) the commencement or continuance of a criminal proceeding; (ii) its legal causation by the present defendant against the plaintiff who was defendant in the original proceeding; (iii) its *bona fide* termination in favour of the present plaintiff; (iv) the absence of probable cause for such proceeding; (v) the presence of malice therein; (vi) damage conforming to legal standards resulting to the plaintiff. *Abrath v. N. E. Ry. Co., 11 App. Cas. 247, Cox v. English, Scottish and Australian Bank, [1905] App. Cas. 168,* referred to. Any enforcement of the criminal law through Courts of Justice concerning a matter which will subject the accused to prosecution without regard to the technical form in which the charge has been preferred and irrespective of the grade of the criminal offence, is a sufficient proceeding upon which an action for malicious prosecution may be based. *Rex v. Smith, 2 Chitty 304 : 24 E. R. 59, Leigh v. Webb, 3 Esp. 164,* referred to. *Per* BEACHCROFT, *J.*—If a person sets the criminal law in motion it is no defence for him to say that the law took a direction which he did not anticipate and did not desire. The responsibility of the person begins with the presenting of the complaint but it does not end there and is not limited to the prayer contained in it. CROWDY *v.* L. O. REILLY (1912) . . . . . **17 C. W. N. 554**

MALIKANA.

——— suit for—

See LIMITATION ACT (IX OF 1908), SCH. I. ART. 132 . . **I. L. R. 35 All. 185**

MAMLATDAR.

See REVENUE JURISDICTION ACT (BOM. ACT X OF 1876), ss. 4(c), 5 AND 6. **I. L. R. 37 Bom. 542**

——— decree of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), ss. 3, 115. **I. L. R. 37 Bom. 114**

MAMLATDARS' COURTS ACT (BOM. II OF 1906).

——— s. 23—*Suit for injunction—Mamlatdar's order—Appeal—District Deputy Collector—Jurisdiction.* Under s. 23 of the Mamlatdars' Courts Act (Bom. Act II of 1906), the Collector or the District Deputy Collector invested with the revenue administration of a taluka, has no jurisdiction to exercise the powers of an appellate Court against any order passed by a Mamlatdar under the Mamlatdars' Courts Act (Bom. Act II of 1906). HASAN *v.* RASUL (1913) **I. L. R. 37 Bom. 585**

MANAGEMENT.

——— right of—

See CHURCH . **I. L. R. 36 Mad. 418**

MANDAMUS.

See PLEADERSHIP EXAMINATION. **I. L. R. 40 Calc. 588**

——— action for—

See MUNICIPAL CORPORATION. **I. L. R. 40 Calc. 836**

MÁNPÁN.

——— dispute as to—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 9, SCH. II. s. 20. **I. L. R. 37 Bom. 442**

MARRIAGE.

See HINDU LAW—MARRIAGE. **I. L. R. 35 All. 265**

See HINDU LAW—MARRIAGE. **I. L. R. 37 Bom. 295**

See HINDU LAW—WILL **I. L. R. 37 Bom. 18**

MARRIAGE—*concld.*

—— *Legitimacy—Co habitation—Presumption of law in favour of legal marriage how may be rebutted—Finding of fact based on disregard of presumption if may be attacked in Second Appeal* When it is proved that two persons have lived together for many years as husband and wife and their child has always been recognised as legitimate the presumption of law is that they were lawfully married The presumption can be repelled only by conclusive evidence and is not displaced merely because the direct evidence of marriage which took place many years ago is not satisfactory *Piers* v *Piers 2 H L C 331 Morris* v *Davies, 5 Cl & Fin 163* and *Mouji Lal* v *Chandrabati Kumari I L R 38 Calc 700* referred to Where the lower Appellate Court reversed the finding of the trial Judge in favour of legitimacy without reference to the above principle and upon a mere balance of probabilities its finding was set aside on Second Appeal as being contrary to law BEPIN BEHARY DAS BAIRAGI *v* ATUL KRISHNA DAS BAIRAGI (1911) **17 C W N 494**

MARRIAGE CUSTOM

See JEWISH LAW **I L R 40 Calc 266**

MARRIED WOMEN S PROPERTY ACT (III OF 1874)

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 60 **I L R 37 Bom 471**

MASTER AND SERVANT

—— *Clerk engaged on a monthly salary—Relinquishment of employment without consent of master—Clerk not entitled to salary for broken portion of month in which he left his service* *Held* that an office clerk engaged on a monthly salary is not entitled to any salary for the broken portion of a month in the course of which he leaves his service without the consent of his employer *Ridgeway* v *Hungerford Market Company 3 A & E 171 Dhunmee Behara* v *Sevenoaks I L R 13 Calc 80 and Ramji Manor* v *Little 10 Bom H C R 57* referred to RALLI BROTHERS *v* AMBICA PRASAD (1912) **I L R 35 All 132**

MEDICAL WORKS

—— reference to—

See LIMITATION **I L R 40 Calc 898**

MEMORANDUM OF APPEAL

See REFUND OF COURT FEE **I L R 40 Calc 365**

MEMORANDUM OF ASSOCIATION

See COMPANIES ACT, 1882, ss 6 40 41 **I L R 40 Calc 1**

MERCHANDISE MARKS ACT (IV OF 1889)

—— ss 6, 7—

See TRADE MARK **I L R 40 Calc 281**

MESNE PROFITS

1 —— *Jurisdiction—Suit for recovery of possession with mesne profits—Mesne profits assessed in the execution proceedings—Amount assessed more than the pecuniary jurisdiction of the Court* A suit for recovery of possession of certain lands with mesne profits from the date of dispossession up to the date of restoration of possession was brought in the Munsif s Court It was decreed together with the mesne profits claimed and the Court directed that the amount of mesne profits would be determined in the execution proceedings The decree having been affirmed on appeal the decree holder applied to the executing Court for ascertainment of mesne profits The total amount of mesne profits ascertained by the Munsif was Rs 1 630 8 including interest On an objection taken by the judgment debtor that the executing Court being a Munsif was not entitled to award mesne profits of a higher amount than Rs 1 000 *Held* that the executing Court had jurisdiction to award the mesne profits ascertained in the present case *Ramesuar Mahton* v *Dilu Mahton I L R 21 Calc 550* followed in principle *Bhupendra Kumar Chakrabarti* v. *Purna Chandra Bose 13 C L J 132* distinguished PANCHURAM TEKADAR *v* KINOO HALDAR (1912) **I L R 40 Calc 56**

2 —— *Suit for recovery of mesne profits or damages without a declaratory suit whether maintainable—Symbolical possession—Bengal Tenancy Act (VIII of 1885) s 157 principle laid down in* If a person who has been dispossessed from an immovable property brings a suit for recovery of mesne profits the suit is not maintainable The proper remedy is to institute a suit for declaration of title and recovery of possession with mesne profits *Lep Singh* v *Nimar I L R 21 Calc 244* referred to When the title of the plaintiff is denied by the defendant he (plaintiff) ought not to obtain a decree for mesne profits till his title has been established *in a Court of competent jurisdiction* Where the title of the plaintiff is established in a Court of competent jurisdiction that decision is conclusive between the parties for all time to come The symbolical possession by the plaintiff is effective as against the judgment debtor though it may not be operative as against strangers to the suit Where the title of the plaintiff to immoveable property has been restored and he has obtained symbolical possession and allowed the defendant to continue in actual occupation of the land and successfully asserted his right to be paid a fair and reasonable amount of damages for use and occupation of the land it is not open to the defendant to question the title of the plaintiff and there is no intelligible reason why the latter should not be allowed to maintain an action for recovery of damages for use and occupation of the land This principle is recognised by the Legislature in s 157 of the Bengal Tenancy Act GIRI NARAIN CHATTERJI *v* MODHU SUDAN MUKERJI (1911) **17 C W N 324**

MIGRATION.

See Hindu Law—Joint Family.
I. L. R. 40 Calc. 407

MINING LEASE.

———— *Parcels—Area stated within specified Boundaries—Alleged Deficiency—Abatement of Rent.* The appellant was lessor, and the respondents lessees under a mining lease, the terms of which were contained in a kabuliyat granting the rights of cutting, raising, and selling coal beneath "400 bighas of land, described in the schedule below, in Mauza Dobari;" the schedule specified boundaries and added "right in the coal underneath the 400 bighas of land within these boundaries." In a suit to recover arrears of rent the respondents alleged that they were in possession of less than 400 bighas and claimed to be entitled to an abatement of rent: *Held*, (i) that the construction of the kabuliyat as to the land included in the lease could not be varied by evidence of the negotiations which led to the contract or by evidence that there were not 400 bighas within the specified boundaries; (ii) further, that the respondents had failed to prove what was the area in fact contained within the boundaries or that of which they had been given possession. Durga Prasad Singh *v.* Rajendra Narayan Bagchi (1913)
L. R. 40 I. A. 223

MINOR.

See Contract Act (IX of 1872), s. 11.
I. L. R. 35 All. 370

See Hindu Law—Joint Family.
I. L. R. 37 Bom. 340

See Mahomedan Law—Maintenance.
I. L. R. 37 Bom. 71

See Succession Certificate Act, s. 9.
I. L. R. 36 Mad. 214

See U.P. Land Revenue Act (III of 1901), ss. 111, 112 and 233 (*k*).
I. L. R. 35 All. 126

———— authority of—

See Mortgage I. L. R. 40 Calc. 342

———— non-representation of—

See Appeal to Privy Council.
I. L. R. 40 Calc. 635

———— right to question—

See Limitation Act (IX of 1908), s. 6, Sch. I, Art. 125.
I. L. R. 36 Mad. 570

———— suit by—

See Civil Procedure Code (Act XIV of 882), s. 462 I. L. R. 36 Mad. 295

1. ———— *Representation of minor in suits—Suit to set aside compromise of and decrees in suits to which minors were parties—Civil Procedure Code, 1882, ss. 443, 456 and 462—Minors unrepresented owing to fraud and misrepresentation of de facto guardian whose interest*

MINOR—*contd.*

conflicted with theirs—Form of decree—Civil Procedure Code. 1908, s. 98—Specific Relief Act (I of 1877), s. 42—Question of law. In this case the appellants sued for a declaration that a compromise of certain pre-emption suits and decrees based thereon, made on their behalf in 1899 when they were minors, were not binding on them, having been obtained by the fraud and misrepresentation of the respondent (who was then their *de facto* guardian and manager of their property) and in proceedings in which they were practically unrepresented; and they prayed that they might be restored to the position held by them prior to the date on which the compromise and decrees were made. It appeared that although the appellants were described in the proceedings as "under the guardianship" of one *H. P.*, he had never been properly appointed their guardian *ad litem* by the Court as required by s. 443 of the Civil Procedure Code, 1882: that no *bonâ fide* application had ever been made under s. 456 to have a guardian *ad litem* appointed by the Court; and that the leave of the Court had not been obtained to enter into the compromise on the appellants' behalf as was necessary under s. 462. *Held*, that the appellants were entitled to the declaration they sought. *H. P.* had, their Lordships found, been introduced into the suits of 1899 by the respondent as the guardian or next friend of the appellants to advance the interests of the respondent and to defeat the interests of the appellants, which conflicted with those of the respondent: he had throughout acted under the directions and on behalf of the respondent and in his interest and contrary to the interests of the appellants, and the respondent had taken advantage of his position to the detriment of the appellants. There was therefore no one to protect them, and they were unrepresented in the proceedings, which were therefore not binding on them. *Manohar Lal* v. *Jadunath Singh, I. L. R. 28 All. 585: L. R. 33 I. A. 128*, followed. S. 42 of the Specific Relief Act (I of 1877) which had been applied to the case by the majority of the Court of the Judicial Commissioner, was held not to be applicable. *Semble:* The question whether on certain stated facts the relief which the appellants prayed for should be granted or refused, was a question of law within the meaning of s. 98 of the Civil Procedure Code (Act V of 1908); and where, on a difference of opinion on that question between two Judges of the Court, the case was referred under that section to a third Judge, that was the only question he had jurisdiction to consider and decide. Partab Singh *v.* Bhabuti Singh (1913)
I. L. R. 35 All. 487

2. ———— *Minor representation of, in suit—Guardian ad litem refusing to act—Mitakshara father if proper guardian in suit on mortgage of family property by him—Hindu law, Mitakshara family—Debts, son's liability for—Mortgage decree if binds infant son who is not represented—Equity of redemption if barred by such decree—Decree, form of—Practice—Redemption, decree—Decree, form of—Practice—Redemption, decree*

MINOR—*concld*

for passed In a suit on a mortgage executed by a Mitakshara father the father was proposed as

ther step was taken by the plaintiffs to have a guardian *ad litem* appointed for the infant and the suit was decreed *Held* that the infant was not represented in the suit and the decree was therefore not binding on him *Walian* v *Banke Behari L R 30 I A 182 I L R 30 Calc 1021* distinguished *Khiarajmal* v *Diam I L R 32 Calc 296 9 C W N 201* referred to In a suit by the infant for a declaration that the decree was fraudulent and not binding on him it was found that the mortgage was executed for legal necessity and that the infant son was not born at the time of the mortgage *Held* that it would be unfair to drive the mortgagor to a fresh suit to enforce the mortgage against the infant when the case had been decided on the merits and the mortgage found binding on the infant But although the mortgage was binding on the plaintiff he had since his birth a share in the equity of redemption and his right to redeem could not

suit decree for redemption was passed BAL KISSEN LAL *v* CHOWDHURY TAPESUR SINGH (1911)

17 C W N 219

3 ——————— *Minor decree against effect of if no d—Minor sued as major and unrepresented by guardian ad litem if party to a suit* A decree against a person who is neither a party nor is properly represented on the record is a nullity and might be disregarded without any proceeding to set it aside *Kh arajmal* v *D am 9 C W N 201 I L R 32 Calc 296* referred to Where a suit for rent was brought and an *ex parte* decree passed against a person who *though sued as a major* was *found to have* been a minor at that time and remained unrepresented by a guardian *ad litem* *Held* that the minor was not d the de ree passed against v *Ismail Khan 15 C L J 3 1 7 C W N 774* ed *Held* also iff as to the minority of the defendant affect the rights of the minor PURNA CHANDRA KUNWAR *v* BEJOY CHAND MAHATAB (1913)

17 C W N 549

MINORITY

See HINDU LAW—ALIENATION

I L R 40 Calc 966

MIRASI LEASE

See HEREDITARY OFFICES ACT (BOM III OF 1874) ss 11 11A

I L R 37 Bom 37

MISDIRECTION

See JURY, TRIAL BY

I L R 40 Calc 367

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evidence—I ornaments derer—Verdict of jury value of where presu p of law not explained Where in a case of murder blood stained ornaments were found in the room occupied by the accused and the evidence established that the articles belonged to the deceased and in the Sessions Judge s charge to the jury there was no direction pointing out that the possession in this case if believed was a fact from which the Court might presume not merely theft or receipt of stolen property but also murder with which the accused was charged *Held* that this was a serious omission detracting materially from the value of the verdict and opinion of the jurors It is especially important that a Judge should point out a presumption of th s kind because jurors are often reluctant to act on that which is commonly known as circumstantial evidence EMPEROR *v* SHEIKH NEAMATULLA (1913)

17 C W N 1077

MISJOINDER

See PRELIMINARY DECREE

I L R 37 Bom 60

MISJOINDER OF CAUSES OF ACTION

See AGRA TENANCY ACT (II OF 1901) s 34

I L R 35 All 512

MISJOINDER OF CHARGES

See CHARGE

I L R 40 Calc 318 846

MISREPRESENTATION

See ADVERSE POSSESSION

I L R 40 Calc 173

MITAKSHARA

See HINDU LAW—JOINT FAMILY

I L R 40 Calc 407

See HINDU LAW—JOINT FAMILY

I L R 35 All 302

MONEY PAID UNDER DECREE

——— suit for—

See VOLUNTARY PAYMENT

I L R 40 Calc 598

MOPLA

——— gift to a—

See MAHOMEDAN LAW—GIFT

I L R 36 Mad 385

MORTGAGE

MORTGAGE—*contd.*

See ADVERSE POSSESSION.
I. L. R. 36 Mad. 97

See AGREEMENT AGAINST PUBLIC POLICY.
I. L. R. 40 Calc. 113

See CENTRAL PROVINCES GOVERNMENT WARDS ACT, s. 18.
I. L. R. 40 Calc. 784

See CIVIL AND REVENUE COURTS.
I. L. R. 35 All. 464

See CIVIL PROCEDURE CODE, 1908, O. XXXIV, R. 1; O. I, R. 9.
I. L. R. 35 All. 441

See CIVIL PROCEDURE CODE, 1908, O. XXXIV, R. 1.
I. L. R. 35 All. 484

See CIVIL PROCEDURE CODE, 1908, O. XXXIV, R. 8.
I. L. R. 35 All. 116

See CIVIL PROCEDURE CODE, 1908, O. XXXIV, R. 14.
I. L. R. 35 All. 518

See COURT FEES ACT (VII OF 1870), s. 7, CL. (IX) . I. L. R. 35 All. 92, 94

See COURT FEES ACT (VII OF 1870), SCH. I, ART. 1; SCH. II, ART. 11.
I. L. R. 35 All. 476

See EVIDENCE . I. L. R. 35 All. 194

See EVIDENCE ACT (I OF 1872), s. 68.
I. L. R. 35 All. 254

See HIGH COURT, BOMBAY, CIVIL CIRCULAR 96, CL. (*l*).
I. L. R. 37 Bom. 631

See HINDU LAW—JOINT FAMILY.
I. L. R. 35 All. 428

See HINDU LAW—JOINT FAMILY.
I. L. R. 35 All. 553, 571

See HINDU LAW—WIDOW.
I. L. R. 35 All. 311, 326

See LAND REVENUE CODE (BOM. ACT V OF 1879, AS AMENDED BY BOMBAY ACT VI OF 1901), s. 56.
I. L. R. 37 Bom. 692

See LIMITATION I. L. R. 37 Bom. 326

See LIMITATION ACT (IX OF 1908), s. 31.
I. L. R. 35 All. 167

See MORTGAGE DECREE.

See MORTGAGE IN FRAUD OF CREDITORS.

See MORTGAGE OR SALE.

See MORTGAGEE.

See REGISTRATION ACT (XVI OF 1908), s. 50 . . I. L. R. 35 All. 271

See TRANSFER OF PROPERTY ACT (IV OF 1882) SS. 59, 100.
I. L. R. 35 All. 164

MORTGAGE—*contd.*

——— by agriculturist—

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), s. 15B.
I. L. R. 37 Bom. 614

——— by widow—

See HINDU LAW—ALIENATION.
I. L. R. 40 Calc. 721

———proof of execution of—

See EVIDENCE ACT (I OF 1872), SS. 69, 70
I. L. R. 35 All. 364

1. CONSTRUCTION.

1. ——— *Entire interest mortgaged for family purposes—Liability of minor son when authority may be presumed—Alienation—Onus of proof—Evidence Act (I of 1872), s. 106—Transfer of Property Act (IV of 1882). ss. 85, 90—Civil Procedure Code (V of 1908), O. XXXIV, r. 6.* Where a mortgage purports to charge the entire interest in a property, and the mortgage-money was advanced for legitimate family purposes, express or implied authority of minor coparceners may be implied, and the mortgage may be enforced against the entire family interest. *Suraj Bunsi Koer* v. *Sheo Persad Singh, I. L. R. 5 Calc. 148 ; L. R. 6 I. A. 88,* referred to. Authority to mortgage may also, according to the peculiar circumstances of a case, be implied even in cases where the mortgage-money was not advanced for legitimate family purposes. A mortgage is an alienation, even though it is for a very particular purpose, *e.g.*, as security only for the amounts drawn or paid on account of instalments of rent. *Gharibullah* v. *Khalak Singh, I. L. R. 25 All. 407 : L. R. 30 I. A. 165,* referred to. Where on the one side it is proved that the whole of the mortgage-money, with the exception of a very small portion of it, was advanced for legitimate family purpose, and there is, therefore, a sufficient foundation for a decree for sale on the mortgage, and on the other side it is not shown that the small portion of the debt was not for any immoral purpose, the smaller item may be regarded as a debt of the father binding on the son. *Hunoomanpersaud Panday* v. *Munraj Koonweree, 6 Moo. I. A. 393 ; 18 W. R. 81 n, Luchmun Dass* v. *Giridhar Chowdhry, I. L R. 5 Calc. 855, Maheswar Dutt Tewari* v. *Kishun Singh, I. L. R. 34 Calc. 184, Kishun Pershad Chowdhry* v. *Tipan Pershad Singh, I. L. R 34 Calc. 735, Lala Suraj Prosad* v. *Golab Chand, I. L. R. 28 Calc. 517,* referred to. BISWANATH PERSAD MAHTA *v.* JAGDIP NARAIN SINGH (1912)
I. L. R. 40 Calc. 342

2. ——— *Construction—Redemption—Covenant that the loan would be repaid "within a year"—Mortgagor if may redeem within a year.* Unless there is an agreement to the contrary, the right of foreclosure and the right of redemption must be deemed co-extensive. Whether there is any special provisions in the contract which takes the case out of the general rule must

MORTGAGE—*contd.*

1. CONSTRUCTION—*concld.*

be determined upon the terms of the contract between the parties Where the mortgage deed provided that "the money would be paid, principal and interest, within one year" *Held*, that the case fell within the class of cases in which the mortgage is payable before a certain day and not within the class where a day is fixed for the payment of the debt; and it was open to the mortgagor to redeem the mortgage within one year of the taking of the loan PURNA CHANDRA SARMA *v* PEARY MOHAN PAL (1912)

17 C. W. N. 149

3 ——————— *Usufructuary mortgage followed by lease to mortgagor—Contemporaneous deeds—Interpretation— Lease on easy terms surrendered by mortgagor—Mortgagee, if may insist on appropriation of whole profits to interest—Unregistered agreement to vary mortgage deed, if admissible—Registration Act (III of 1877), ss 17, 49—Evidence of preliminary negotiations, if admissible—Evidence Act (I of 1872) ss 91, 92* Where in a mortgage bond it was stipulated that the mortgagee should be in possession of the mortgaged property and take the profits in lieu of interest, but by a practically contemporaneous instrument, the mortgagee granted a lease to the mortgagor on easy terms, reserving a rent of Rs 4,200 only when the interest worked out to Rs 6,000, but the mortgagor being unable to pay this rent gave up possession to the mortgagee: *Held*, in a suit for redemption of the mortgage, that the mortgagee was entitled to appropriate the whole of the profits realised by him towards interest, according to the terms of the mortgage-bond That the mortgage and the lease were parts of one and the same transaction, but there was no inconsistency between the two instruments. It is not permissible to contradict or vary the express and unambiguous terms of a written instrument by reference to preliminary negotiations or previous conversations An unregistered agreement purporting to set out in what manner the rents and profits of the mortgaged property were to be dealt with, at variance with the stipulation in that behalf contained in the registered mortgage deed, was inadmissible in evidence by the provisions of the Registration Act. ABDULLAH KHAN *v* BASHARAT HUSSAIN (1912)

17 C. W. N. 233;
I. L. R. 35 All. 48

2. FEMALES, REPRESENTATION OF.

——————— *Mortgage bond executed —Whether females were represented in the mortgage transaction by male members of family—Estoppel by conduct* The appellants were the female members of a Mahomedan family which had adopted the Hindu religion in matters of

MORTGAGE—*contd.*

2. FEMALES, REPRESENTATION OF—*concld.*

worship, and as to which both Courts in India concurrently held that there was no custom proved

bers of the family, in which suit the appellants were also joined as defendants, the first Court made a decree against the interests of the male defendants only in the property; but the High Court decreed the suit against both the male and female defendants on the grounds that, because the female members had not actively interfered in the management of the property, the male defendants must be taken to have represented them in the mortgage transaction It appeared that in other transactions the male members of the family had dealt with the family property without the active concurrence of the females *Held*, by the Judicial Committee, reversing the decision of the High Court, that the evidence did not prove that the male defendants had "represented" the appellants The latter were *purdanashin* ladies, and naturally left the management of the property to their male relatives There was nothing to show that the appellants had misled the respondent either by word or conduct to the belief that they had no proprietary interest in the property, and he made no inquiries in the matter from them or their husbands as he might have done if he had any doubt in the matter The decree of the High Court was therefore erroneous, so far as it made the appellants liable, and should have been limited to making liable only the interests in the property of the male defendants, the executants of the mortgage bond AZIMA BIBI *v* SHAMALANAND (1912)

I. L. R. 40 Calc. 378

3. INTEREST.

1 ——————— **Interest**—*Preliminary decree, appeal by mortgagee against, dismissed—Mortgagee if may claim contract rate of interest up to date of payment fixed in final decree—Purchaser of equity of redemption, if personally liable.* Where the mortgagee plaintiff prefers an unsuccessful appeal against the preliminary decree made in his suit and the mortgagor does not ask for extension of time to enable him to redeem, it is not open to the mortgagee to demand interest at the contract rate up to the date fixed for payment in the final decree. A purchaser of the equity of redemption is not personally liable to repay the mortgage debt TARA CHAND MARWARI *v* BROJA GOPAL MOOKERJEE (1912) . . **17 C. W. N 457**

2 ——————— *Interest—Mortgage by conditional sale with no provision for post diem interest—Post diem interest not allowed.* A mortgage executed in 1860 provided for the payment of the sum of Rs 300 with interest at Re. 1-8 per cent. per mensem in one lump sum upon a certain specified date four years from the date of

MORTGAGE—*contd.*

3. INTEREST—*concld.*

the mortgage. It further provided that, if the money was not paid upon that date, the property mortgaged should become the absolute property of the mortgagee. There was no stipulation of any kind as to the payment of interest after the date fixed. *Held*, that the mortgagee was not entitled to *post diem* interest. *Mathura Das* v. *Raja Narindar Bahadur, I. L. R. 19 All. 39*, distinguished. *Gudri Koer* v. *Bhubaneswari Coomar Singh, I. L. R. 19 Calc. 19*, and *Moti Singh* v. *Ramohari Singh, I. L. R. 24 Calc. 699*, followed. BALWANT SINGH *v.* GAYAN SINGH (1913)

I. L. R. 35 All. 534

4. REDEMPTION.

1. ——— ——— — *Redemption—Construction of mortgage as to the terms of redemption—Mortgage and lease to mortgagor contemporaneously granted—Mortgage executed before Transfer of Property Act (IV of 1882) came into force —Mortgagee's security reduced by portion of property being withdrawn—S. 65(a) of Transfer of Property Act—Right of mortgagee to compensation.* The plaintiff (respondent) mortgaged to the defendant (appellant) certain property by a deed, dated the 25th of August, 1880, for Rs. 70,000 for eight years. On the 29th of August (and so practically contemporaneously with the mortgage), a lease of the mortgaged property was executed by the mortgagee in favour of the mortgagor at an annual rent of Rs. 4,200, which represented interest on the mortgage debt at the rate of 6 per cent. per annum. The mortgage contained a clause that "it is agreed by mutual consent of the parties that the profits of the property mortgaged shall belong to the mortgagee in lieu of the interest on the mortgage-money, and I, the mortgagor, shall have no claim for mesne profits. The mortgagee also shall have no right to claim interest on the mortgage-money advanced by him." The lease after reciting the mortgage referred to a provision in the latter that the mortgagor should be entitled to sell a certain portion of the mortgaged property on condition that he handed over the whole of the proceeds of the sale to the mortgagee in payment of the mortgage debt, and provided that "under the condition whatever sum of money the mortgagor should pay to the mortgagee in a lump sum, should be credited and set off against the rent payable under the lease with interest at 8 annas per cent. per mensem." Subsequently three further charges were tacked on to the mortgage, the latest of which was dated the 13th of December, 1882. In June, 1881, the mortgagor was in arrear with his rent and the mortgagee brought a suit against him on which the mortgagor gave up possession of the property to the mortgagee. In a suit for redemption (the right to redeem not being disputed): *Held*, that the mortgagee was entitled under the terms of the mortgage to appropriate the profits of the mortgaged property in lieu of the interest on the mortgage-money not paid by

MORTGAGE—*contd.*

4. REDEMPTION—*contd.*

the mortgagor. Evidence of preliminary negotiations and previous conversations were not admissible to contradict or vary the terms of the mortgage (Evidence Act, s. 92). *Held*, also, that the mortgage and the lease were both parts of one and the same transaction. But there was no inconsistency between the two instruments, nor would there have been any inconsistency if the mortgage itself had contained a provision for granting a lease on the terms upon which the lease was actually granted. *Held*, further, that the original mortgage having been executed before the Transfer of Property Act came into operation, that Act was not applicable, notwithstanding that one of the further charges was executed subsequently to that date. Whatever might be the construction of s. 65(*a*) of that Act (which was cited in support of the mortgagee's claim), he was not, on the evidence and under the circumstances of the present case, entitled to compensation for any loss or damage occasioned by his security being diminished owing to a portion of the mortgaged property being successfully claimed from the mortgagor. ABDULLAH KHAN *v.* BASHARAT HUSAIN (1912) . . . **I. L. R. 35 All. 48**

2. ——————————*Redemption by reversioners after foreclosure decree—Subrogation—Transfer of Property Act (IV of 1882), s. 91.* While a sale in execution under a mortgage decree was in progress, plaintiff (a stranger) paid the decree amount into Court on behalf of some of the reversioners to the property. *Held*, that though the mere payment of a mortgage-debt by a stranger will not entitle him to the mortgagee's rights by by subrogation yet here under s. 91, Transfer of Property Act (IV of 1882), the reversioners became equally entitled to a charge over the property and they could validly assign this charge to the plaintiff by way of sub-mortgage. The English and Indian Law relating to the doctrine of subrogation compared and discussed. *Per* SUNDARA AYYAR, *J.*—I am on the whole inclined to hold that a reversioner cannot voluntarily claim to redeem a mortgage made by the last male holder or institute a suit for that purpose. But does it necessarily follow that when a suit is instituted by a mortgagee for sale, the reversioner has not got a sufficient interest in the property to entitle him to discharge the mortgage to prevent the loss of the property to which he would be entitled to succeed on the death of the widow? I do not think I am bound to hold that his right stand on the same footing when he claims of his own accord to redeem and when he tries to save the property for the estate upon the mortgagee attempting to sell it. The right of a person interested in the payment of money which another is bound by law to pay and who therefore pays it, to be reimbursed by the other is recognised in s. 69 of the Indian Contract Act. There is no reason for holding that only those who have an interest in a mortgaged property within the meaning of ss. 85 and

MORTGAGE—*contd*

4 REDEMPTION—*contd*

91 of the Transfer of Property Act can be held to be interested in the payment of money due on a mortgage created by the last male owner NARAYANA KUTTI GOUNDAN *v* PECHIAMMAL (1913) **I L R 36 Mad 426**

3 ———— *Redemption—Compromise deed executed afterwards, restricting right to redeem—Agreement, if clog on redemption* There is nothing in law to prevent the parties to a mortgage from coming to any arrangement afterwards qualifying the right to redeem Where the parties to a mortgage, executed in 1846, entered into a compromise in 1870 whereby the right to redeem was admitted as subsisting but was subjected to certain conditions *Held* that the representative of the mortgagor could not sue for redemp

covenants
SHANKAR

W. N 1

4 ———— *Redemption—Accounts—Mortgagee obstructing and prolonging litigation to keep property in possession—Interest, disallowance of, for period during which defendant prosecuted appeals to higher Courts unsuccessfully —Liability of defendants to account for rents and profits received during the period—Expenses of management, necessarily incurred—Costs of taking accounts and striking balance against redemption*

menced on 30th May 1888, and a preliminary decree for accounts, etc, was passed by the Sub

1895, and the plaintiffs, having applied in the meanwhile for the taking of accounts in pursuance of the decree of the High Court, the same was taken and a final decree for redemption was passed by the Subordinate Judge on the 29th July 1902, declaring that a sum of Rs 3,31,162 0 11 was due from the plaintiffs to the defendant at that date and decreeing that on payment into Court within six months from that date of the said sum, with interest at 12 per cent per annum on the sum of Rs 2,86,886 from the 29th July 1902 to the date of payment into Court within such six months, plaintiffs should have a reconveyance, free of incumbrances of the property under mortgage, etc, and the plaintiffs appealed to the High Court and the defendants also filed cross objections but both were dismissed by that Court, and upon appeal and cross appeal by both parties to the Privy Council, the decree of the Subordinate Judge of 29th July 1902, was maintained by the Board's judgment, dated the 13th June 1912, but the Privy Council found that in the action the defendants had been obstructive and oppressive and they had unduly and intentionally prolonged the litigation to their own advantage and to the serious detriment of the plaintiffs *Held*, by the Privy Council, that no further sum as interest beyond the interest on the sum of Rs 2 86,886 decreed by the Subordinate Judge for the period from 29th July 1902 to the 28th January 1903, should be allowed to the defendants in the accounts which the High Court was directed to take of the rents and profits which the defendants had received since 29th July 1902, and it was ordered that the expenses of taking such account and all procedure incident thereto and to the striking of the balance upon payment of which redemption might be made was to be borne by the defendants, that allowance should be made in taking the accounts for money, if any, necessarily spent by the defendants after the 29th July 1902 in the proper management and preservation of the mortgaged property, but no interest should be allowed on the money so spent, but that simple interest should be allowed to the plaintiffs on the balance or excess of each year's receipts over expenditure at a rate to be fixed by the High Court and that the sum of money found to be due to the plaintiffs should be deducted by the High Court from the amount which would have been payable by the plaintiffs into Court on the 28th January 1903, if payment had been made under the decree of the Subordinate Judge of 29th July 1902, and that the plaintiffs should be allowed to redeem on payment by them into the High Court within a time to be fixed by that Court of the balance to be ascertained in the manner indicated In the

cross appellants GANGA BAHU DEBI *v* APURBA KRISHNA ROY (1912) **17 C W N 25**

5 SALE OF MORTGAGED PROPERTY

1 ———— *Sale—Chota Nagpur Tenancy Act (Beng VI of 1908), s 47—Decree for sale of property situate in Manbhum—Estoppel* After the preliminary decree on a mortgage was passed, and before the final decree for sale was made, the Chota Nagpur Tenancy Act, 1908, was extended to Manbhum, where the mortgaged pro

was thereafter confirmed Upon appeal to the High Court *Held*, that the sale was in direct contravention of the provisions of s 47 of the Chota Nagpur Tenancy Act *Held*, further, that the judgment debtor cannot be estopped from bringing to the notice of the Court what the Court must be taken to know of itself, that there was a distinct

MORTGAGE—*contd.*

5, SALE OF MORTGAGED PROPERTY—*concld.*

provision of law which prevented the sale of the property. LAKSHMI BIBI KUJRANI *v.* ATAL BIHARY HALDAR (1913) . . I. L. R. 40 Calc. 534

2. ——— *Parties—Suit for entire mortgage-money and sale of entire mortgaged property—Omission to implead certain persons interested—Decree to which plaintiffs entitled.* Where a plaintiff-mortgagee sued for the recovery of the whole of the mortgage-money by the sale of the whole of the mortgaged property, but by an oversight omitted to implead certain persons who had acquired a share in the property subsequent to the mortgage in suit, it was *held*, that so much of the claim should be decreed as was proportionate to the interests of the persons who were before the Court. GANESHI LAL *v.* CHARAN SINGH (1913) I. L. R. 35 All. 247

3. ——— *Suit for sale against auction purchaser of mortgaged property —Evidence, admissibility of—Recital of receipt of consideration —Estoppel. Held,* that an admission made by a mortgagor in a mortgage-deed and also before the registering officer as to the receipt of consideration, is admissible in evidence against the purchaser of the mortgaged property at an auction sale in execution of a simple money decree. *Bihari Lal* v. *Makhdum Bakhsh, I. L. R. 35 All. 194,* followed. *Manohar Singh* v. *Sumirta Kuar, I. L. R 17 All. 428,* not followed. *Mahomed Mozuffer Hossein* v. *Kishori Mohan Roy, I. L. R. 22 Calc. 909,* referred to. *Held,* also, that a purchaser at auction of the right, title and interest of the father alone in joint family property which had been mortgaged by the father, was not entitled to raise the plea that the mortgage was made without legal necessity so long as there was time yet for the sons to challenge the purchase. *Muhammad Muzamilullah Khan* v. *Mithu Lal, I. L. R. 33 All. 783,* distinguished. BAKHSHI RAM *v.* LILADHAR (1913) . . I. L. R. 35 All. 353

6. USUFRUCTUARY MORTGAGE.

——— *Usufructuary, if implies personal covenant to pay—Suit against debtor personally on usufructuary mortgage—Limitation Act, 1877, Sch. II, Art. 116.* Every loan implies a promise to repay, and an unqualified admission of indebtedness is equivalent to an express covenant and creates a personal obligation. *Kerr* v. *Ruxton, 4 C. L. J. 510,* referred to. A usufructuary mortgage providing for the repayment of the mortgage-debt with interest from the rents and profits of the mortgaged property within a specified period on the expiry of which the mortgagor is to be put in possession, while prescribing a mode of payment, does not necessarily imply that the creditor is limited to that mode alone, if it is found insufficient to satisfy the debt. There was clearly a personal obligation to pay where the document expressly provided that the debtor would be responsible for the deficiency. *Marotam* v. *Sheo Pargash, L. R. 11 I. A 83 ; I. L. R. 10 Calc. 740,* and *Kalka Singh* v. *Paras Ram, L. R. 22 I. A. 68 ; I. L. R. 22 Calc. 434,* distinguished. *Parbati Charan* v. *Govinda Chandra, 4 C. L. J. 246,* referred to. A suit to recover from the debtor personally money due on a registered mortgage-bond, is a suit for compensation for the breach of a contract in writing registered within the meaning of Art. 116 of Sch. II of the Limitation Act. *Kerr* v. *Ruxton, 4 C. L. J. 510,* relied on. *Nobo Coomar* v. *Siru Mullick, I. L. R. 6 Calc. 94,* and *Husain Ali* v. *Hafez Ali, I. L. R. 3 All. 600,* referred to. *Held,* on a construction of the document, that the present case fell within the second division of Art. 116 of Sch. II of the Limitation Act. Where the mortgage-bond provided that a specified sum would be paid out of the income of certain properties at prescribed times towards the satisfaction of the debt, but the document gave the debtor seven years' time altogether for the re-payment of his loan : *Held,* that it could not be held upon a construction of the document as a whole that whenever the mortgagee found it impossible to collect the sums mentioned at the appointed time, there was a breach of contract and that time ran from the date of each successive breach. The intention was that the liabilities of the parties should be adjusted on the expiry of the term, and time ran from that date. RAM NARAIN SINGH *v.* ODINDRA NATH MUKERJEE (1911) . . . . . 17 C. W. N. 369

MORTGAGE-DECREE.

See DAMDUPAT, RULE OF.
I. L. R. 40 Calc. 710

See EXECUTION OF DECREE.
I. L. R. 40 Calc. 704

——— *Mortgage-decree, if also money-decree and if decree-holder may be allowed to execute against other property before exhausting security—Civil Procedure Code, 1908, s. 73, O. XXXIV, rr. 5, 6 ; and O. XXI, rr. 10, 12, 13—Transfer of Property Act (IV of 1882), s. 90.* Where the holder of a mortgage-decree applied to Court for an order to be allowed to execute the mortgage-decree as a money-decree by attachment of some other property or for the passing of a supplemental decree for the purpose, but at the same time reserving his rights under the mortgage-decree, on his giving an undertaking not to take any steps as against the mortgaged property till he has exhausted the other property : *Held,* that such an order could not be made having regard to O. XXXIV, rr. 5 and 6 of the Code of Civil Procedure. *Hart* v. *Tara Prasanna Mukerjee, I. L. R. 11 Calc. 718,* commented on. A decree passed in a mortgage suit and directing the realization of the decretal amount from the mortgaged property and, if insufficient, from the defendant personally, is a mortgage-decree and not a money-decree *Fasil Howladar* v. *Krishna Bandhoo Roy, I. L. R. 25 Calc. 580, Lal Behary Singha* v. *Habibu Raah-*

MORTGAGE DECREE—*concld*

man I L R 26 Calc 166 Kartick Nath Pandey v *Juggernath Ram Marwari I L R 27 Calc 285* referred to A person who has taken a mortgage decree should not be allowed to treat it as a money decree and to execute the decree against other properties without exhausting his remedies in respect of the security under his decree It is only after sale of the mortgage security that a decree for the balance due on the mortgage may be given if it was recoverable from the mortgagor personally and his other property and the decree may be executed as an ordinary money-decree *Gopal Das* v *Ali Mohammed I L R 10 All 632 Ram Ranjan Chakrabartty* v *Indra Narain Das 10 C W N 862 I L R 33 Calc 890* referred to SURJA KUMAR KARFORMA *v* PRAMADA SUNDAREE DEBI (1913) 17 C W N 1039

MORTGAGE IN FRAUD OF CREDITORS

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 53 I L R 36 Mad 29

MORTGAGE OR SALE

——————*Deed of sale with condition of repurchase if mortgage—Extraneous circumstances if and when may be referred to to determine nature of deed—Mortgage transaction—Limitation Act (IX of 1908) Art 134—Perpetuity rule against whether applicable* B executed in favour of A a deed of out and out sale with a condition of repurchase of a house but no date was fixed for repurchase On the same date B executed a *kabuliyat* in favour of A by which he accepted a lease of the house sold The Court took into consideration how the language of the document was related to the existing facts such as that the vendor continued in possession paid rent at the usual rate of interest etc and further that the value of the property was much more than the consideration paid *Held* that these are legitimate materials on which a Court is entitled to say that the transaction was a mortgage and in so doing the Court does not infringe the provisions of s 92 of the Evidence Act or disregard anything laid down in *Balkishen Das* v *Legge I L R 22 All 149* A mortgagee s right to redeem is exempt from the operation of the rule against prepetuity SHAZADI BIBI *v* SHEIKH JAMAL (1913) 17 C W N 1053

MORTGAGEE

———— purchase by—

See SALE FOR ARREARS OF REVENUE I L R 40 Calc 89

MUAFIDAR

———— mortgage by—

See N W P AND OUDH LAND REVENUE ACT (XIX OF 1873) ss 146 148 167 I L R 35 All 190

MUNICIPAL BOARD

See N W P AND OUDH MUNICIPALITIES ACT (XV OF 1883) s 10 I L R 35 All 308

MUNICIPAL BOARD—*concld*

See U P MUNICIPALITIES ACT (I OF 1900) s 128 (1) ( ) I L R 35 All 24

———— powers of—

See UNITED PROVINCES MUNICIPALITIES ACT (I OF 1900) s 88 I L R 35 All 375

MUNICIPAL CORPORATION

——————*Chairman—General Committee—Building plans refusal of sanction of—Calcutta Municipal Act (Beng III of 1899) ss 375 377—Action for mandamus or damages whether maintainable—Specific Rel ef Act (I of 1877) s 45* Where plans for building have been rejected by the Chairman and the General Committee of the Calcutta Municipal Corporation no suit is maintainable to have the plans approved or for damages If the Chairman and General Committee have acted honestly and within their authority their decision cannot be reviewed by any Court If the plans have been rejected *mala fide* the only remedy is by an application under s 45 of the Specific Relief Act for an order to compel the Chairman and the General Committee to hear the matter in the manner provided by law *170, Q B Rail 759* referred to PROSAD CHUNDER DE *v* CORPORATION OF CALCUTTA (1913) I L R 40 Calc 836

MUNICIPAL ELECTION

See UNITED PROVINCES MUNICIPALITIES ACT (I OF 1900) s 187 I L R 35 All 450

———— invalidity of—

See RIGHT OF SUIT I L R 36 Mad 120

———— rules for regulation of—

See U P MUNICIPALITIES ACT (I OF 1900) s 187 I L R 35 All 578

MUNICIPALITY

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 195 I L R 37 Bom 365

———— sale by—

See RIGHT OF SUIT I L R 36 Mad 373

MURDER

See PENAL CODE (ACT XLV OF 1860) ss 37 302 304 I L R 35 All 506, 560

See PENAL CODE (ACT XLV OF 1860), ss 300 325 I L R 35 All 329

MUTAWALLI

See WAKF I L R 37 Bom 447

N

NAIKINS.

——— *Adoption—Adoption of daughter by a Naikin—Adoption invalid—Will—Construction—Gift to the adopted daughter as persona designata.* One Sundra, a *naikin* (a professional prostitute), adopted her near relative Hira as her daughter. She next made a will whereby she bequeathed the bulk of her property to Hira. In the will, Hira was referred to at some places by her name and at others as "adopted daughter." On Sundra's death, Hira claimed Sundra's property as her adopted daughter and also as *persona designata* under Sundra's will: *Held*, that Hira could not succeed as an adopted daughter, because Sundra, being a *naikin*, could not validly adopt a daughter to herself. *Mathura Naikin* v. *Esu Naikin, I. L. R. 4 Bom. 545*, followed. *Venku* v. *Mahalinga, I. L. R. 11 Mad. 393*, dissented from. *Held*, further, on construction of the will, that Hira was entitled to succeed as *persona designata* under Sundra's will, for Hira was not to take the property as being the adopted daughter, but she was the adopted daughter and was to take the property because she was the special object of Sundra's bounty. HIRA NAIKIN *v.* RADHA NAIKIN (1912) . **I. L. R. 37 Bom. 116**

NECESSITY.

See HINDU LAW—ALIENATION,
I. L. R. 40 Calc. 288

NEGLIGENCE.

See CARRIERS . **I. L. R. 40 Calc. 716**

See CONTRIBUTORY NEGLIGENCE.
I. L. R. 37 Bom. 575

See RAILWAY . **I. L. R. 37 Bom. 1**

NEGOTIABLE INSTRUMENT.

1. ——— *in favour of A as agent of B—Endorsement by A, simpliciter in C—No primâ facie title to C.* If a negotiable instrument executed in favour of "*A*, as the agent of *B*" is endorsed by *A*, *simpliciter* (*i.e.*, without describing himself as the agent of *B*) to *C*, the endorsement cannot, in the absence of any evidence to show that *A* was intended to be the beneficial owner of the note, convey, in this country, any title to *C* so as to enable *C* to sue the person or persons liable on the note. *Muthar Sahib Maraikar* v. *Kadir Sahib Maraikar, I. L. R. 28 Mad. 244*, referred to. VEERAIYAN CHETTIAR *v.* PONNUSWAMI CHETTIAR (1913) . . . . **I. L. R. 36 Mad. 362**

2. ——— *In favour of several—Discharge by one of several payees, validity of. Held*, by the Full Bench (THE CHIEF JUSTICE dissenting), that one of several payees of a negotiable instrument could give a valid discharge of the entire debt without the concurrence of the other payees. ANNAPURNAMMA *v.* AKKAYYA, 1913.
I. L. R. 36 Mad. 544

NIMAK SAYAR.

——— *Permanent Settlement—Separate grants of zamindari and Nimak*

NIMAK SAYAR—*concld.*

Sayar over the same village, rights which pass under—Right of grantee of Nimak Sayar to enter on land of zemindari for working saltpetre—Right of lessees and licensees of grantee—Reasonable exercise of right—Cujus est solum ejus est usque ad cœlum et ad inferos, doctrine of, application in India—Plaint, amendment of—exclusive right to dig saltpetre misunderstood and wrongly described in plaint as a monopoly. The zemindari in village Manpura was settled on the predecessors-in-title of the defendant at the Permanent Settlement and at the same Settlement the *Nimak Sayar Mehal* in the said and other villages (*i.e.*, an exclusive right to collect nitrous earth from the lands in those villages with a view to extracting saltpetre therefrom) was settled by Government on the plaintiff's predecessor. The plaintiff urged that the grant of the *Nimak Sayar Mehal* entitled her to enter on the land comprised in defendant's zemindari and exercise therein in a reasonable manner the rights vested in her under the grant, whilst the defendant, a recent purchaser of the zemindari right, contended that the grant in question conferred on the plaintiff the right to collect the revenue only if and when saltpetre happend to be manufactured, and that she had no right to come on the land except by the leave and license of the defendant much less to authorise others to utilize the nitrous soil for the collection of saltpetre: *Held*, that what passed under the grant of the *Nimak Sayar Mehal* were not rights of this precarious character. That the *Nimak Sayar Mehal* was no part of the assets of the zemindari, and that the zemindari and the *Nimak Sayar Mehal* were separately settled by the Government, as it was open to it to do, in disregard of the doctrine of English real property *cujus est solum ejus est usque ad cœlum et ad inferos. Gooroo Pershad Bose* v. *Bishnu Charan Heyra*, 1 Sel. Rep. 337 (Old Ed.) 1811, and *Byjnauth* v. *Deen Dyal*, 2 Sel. Rep. 133, referred to. *The Bengal Government* v. *Nawab Zafar Husain Khan*, 5 Moo. I. A. 457, distinguished. That the grant of the *Nimak Sayar Mehal* carried with it the means reasonably necessary for its enjoyment. *Prerogative of Saltpetre*, 12 Coke Rep. 12, referred to. That by virtue of plaintiff's rights as owner of the *Nimak Sayar Mehal*, she, her agents, servants and workmen, lessees and licensees were entitled to enter on the land of the village and to exercise an exclusive right to dig for saltpetre, but so that this be done with as little inconvenience and prejudice as possible to the defendant as the owner of the village and that the ground be made and left as commodious to the defendant as it was before. Plaintiff whose claim of exclusive right to work saltpetre was erroneously described in the plaint as a monopoly, was allowed in Second Appeal to amend her plaint and formulate her claim in happier and more precise language. As the plaint in its original form occasioned the prolongation of the suit the plaintiff, though successful, was ordered to pay costs throughout. GOLAP CHAND *v.* JANKI KUAR (1913) . . **17 C. W. N. 1195**

NOLLE PROSEQUI.

See JURISDICTION OF CRIMINAL COURT—FRESH PROCEEDINGS. I. L. R. 40 Calc. 71

NON-JOINDER.

See MORTGAGE . I. L. R. 35 All. 247

NON JOINDER OF PARTIES.

See CIVIL PROCEDURE CODE, 1908, O. XXXIV, R. 1. I. L. R. 35 All. 484

NON-OCCUPANCY RAIYATS.

See EJECTMENT I. L. R. 40 Calc. 858

NORTH-WESTERN PROVINCES AND OUDH ACTS.

———— 1867—III.

See PUBLIC GAMBLING ACT.

———— 1869—I.

See OUDH ESTATES ACT

———— 1873—XIX.

See NORTH WESTERN PROVINCES AND OUDH LAND REVENUE ACT.

———— 1883—XV.

See NORTH WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT.

———— 1900—I.

See UNITED PROVINCES MUNICIPALITIES ACT.

———— 1901—II.

See AGRA TENANCY ACT

———— 1901—III.

See UNITED PROVINCES LAND REVENUE ACT

———— 1910—IV.

See UNITED PROVINCES EXCISE ACT.

***NORTH-WESTERN PROVINCES AND* OUDH LAND REVENUE ACT (XIX OF 1873)**

———— ss. 146, 148, 167—

———————— "*Proprietor*" —*Mortgage by muafidar—Sale of mahal for default in payment of Government Revenue—Rights of purchaser and mortgagees of muafi.* Where certain *muafidars*, whose rights as such accrued before the year 1870, and were not shown to have been created by the zamindars of the *mahal* in which the *muafi* land in question was situate, executed a usufructuary mortgage of such land, and thereafter the *mahal* was sold for default in payment of Government revenue, it was *held* that the rights of the mortgagees were not extinguished in favour of the purchaser KUNWAR SEN *v.* JWALA PRASAD (1913) . . . I. L. R. 35 All 190

NORTH-WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT (XV OF 1883).

———— s 10—

———————— *United Provinces Municipalities Act (I of 1900), s. 187—Municipal Board—Election—Suit to set aside election—Jurisdiction of Civil Court—Limitation Act (IX of 1908), Sch. I, Art. 120. Held,* that an order of the Government directing that a particular municipal election held in the year 1911 should be conducted according to certain rules passed in 1884, and not according to the rules passed *in pari materiâ* in 1910, which superseded

anything contained in either set of rules, the period of limitation applicable to which was that prescribed by Art 120 of the first Schedule to the Indian Limitation Act, 1908 *Gur Charan Das* v. *Har Sarup, I. L R. 34 All. 391,* referred to. RAGHUNANDAN PRASAD *v* SHEO PRASAD (1913) I. L R 35 All. 308

NOTICE.

See CIVIL PROCEDURE CODE, 1908, s 80. I. L. R. 37 Bom. 243

See CIVIL PROCEDURE CODE, 1908, O XXI, r. 89. I. L R. 37 Bom. 387

See CRIMINAL PROCEDURE CODE, ss 203, 437 . . . I. L. R. 35 All. 78

See PROCESSION I. L. R. 40 Calc 470

1. ———————— *Secretary of State*

the suit contained the names, descriptions and *places of residence of two out of the sixty three* plaintiffs. *Held,* that such a notice was insufficient and did not fulfil the requirements of the statute *The Secretary of State for India* v *Perumal Pillai, I. L R. 24 Mad. 279,* and *Manindra Chandra Nundi* v *The Secretary of State for India, 5 C L. J. 148,* referred to It is competent to the Secretary of State to waive the notice, and he may be estopped by his conduct from pleading the want of notice at a late stage of the case: *Manindra Chandra Nundi* v. *The Secretary of State for India, 5 C L J. 148,* referred to. Where the written statement contained an objection as to the validity of the notice, but no objection was taken by the Secretary of State at any stage of the trial to its omission and it was the second defendant who prayed, just before the trial began, that an additional issue might be raised on this question:

NOTICE—*concld.*

Held, that it was not competent to the second defendant to raise this question. BHOLA NATH ROY *v.* SECRETARY OF STATE FOR INDIA (1912)
I. L. R. 40 Calc. 503

2. ———————— *Search in the Registry office, failure to discover at—Misdirection as to evidence—Second Appeal—Finding of fact—Error of law.* Where the question was whether a purchaser for valuable consideration had notice, at the date of his purchase, of a registered instrument, dated the 25th Bhadra 1300, when it was found that he, before the purchase, had caused a search to be made by his agent of the books in the Registry Office extending to the year 1300 in which the document was entered, and the agent had stated that he did not find the document in the book; and where upon these facts the District Judge held that he had no notice of the registered instrument: *Held*, that there was a presumption of notice of the contents of the book and it could not be rebutted by the mere statement that though a search was made it was unsuccessful. *Held*, further, that although the question at issue was in essence a question of fact, yet the District Judge having misdirected himself in regard to the most important part of the evidence bearing upon the question and having approached the consideration of that evidence from a wrong standpoint, had committed an error of law. *Bushell* v. *Bushell, 1 Sch. & Lef. 90 ; 9 R. R. 21, Hodgson* v. *Dean, 2 Sim St. 221 ; 25 R. R. 188, Procter* v. *Cooper, 2 Drew,* referred to. AKHOY KUMARI DEBI *v.* KANAI LAL KUNDU (1912) . . **17 C. W. N. 224**

NOTICE OF EXECUTION.

See EXECUTION OF DECREE.
I. L. R. 40 Calc. 45

NOVATION.

See PARTNERSHIP.
I. L. R. 37 Bom. 158

O

OATH.

See UNITED PROVINCES EXCISE ACT (IV OF 1910), s. 60 . **I. L. R. 35 All. 575**

OATHS ACT (X OF 1873).

See RES JUDICATA.
I. L. R. 36 Mad. 287

———— s. 13.

See UNITED PROVINCES EXCISE ACT (IV OF 1910), s. 60. **I. L. R. 35 All. 575**

OCCUPANCY HOLDING.

See AGRA TENANCY ACT (II OF 1901), ss. 11 *et seq.* **I. L. R. 35 All. 474**

See AGRA TENANCY ACT (II OF 1901), s. 20 . . **I. L. R. 35 All. 405**

See AGRA TENANCY ACT (II OF 1901), ss. 79 AND 95 . **I. L. R. 35 All. 299**

OCCUPANCY HOLDING—*contd.*

See CIVIL AND REVENUE COURTS.
I. L. R. 35 All. 464

1. ———————— *Mortgage taken by landlord, if evidence of transferability—Assignment of mortgage by landlord to another, effect of—Assignment to purchaser of holding, if recognition of the purchaser's tenancy.* The fact of a landlord himself taking a mortgage of a non-transferable holding is by itself no evidence of its transferability. Where, however, the landlord allowed a purchaser of the holding to take an assignment of his mortgage from him: *Held*, that he was stopped from denying that the purchaser had acquired a valid title by his purchase. A mere assignment of the mortgage by the landlord to a third person by itself would not amount to anything more than a representation that the mortgage was valid and could be enforced against the *jote*. MAHESH NARAIN ROY *v.* MAHARAJA BAHADUR SINGH (1912)
17 C. W. N. 70

2. ———————— *Transfer—Acceptance of rent from transferee—Recognition of validity of transfer—Pleader, scope of authority of.* The acceptance of rent from the transferee of a non-transferable occupancy holding, not as transferee but as the agent or representative of the original tenant, does not amount to a recognition of the validity of the transfer. *Khoodeeram Chatterjee* v. *Rukhinee Boistobee, 15 W. R. 197, Gour Lal* v. *Rameshwar, 6 B. L. R. App. 92, Wilson* v *Radhadulari, 2 C. W. N. 63, Rasamoy Purkait* v. *Srinath Moyra, 7 C. W. N. 132,* relied on. *Kurani Dasi* v. *Sajoni Kant, 12 C. W. N. 539,* referred to. *Baroda Churn Dutt* v. *Hemlata Dasi, 13 C. W. N. 833, Thomas Barslay* v. *Hossein Ali Khan, 6 C. L. J. 601, Naba Kumari* v. *Behary Lal, 11 C. W. N. 865 : I. L. R. 34 Calc. 902,* distinguished. DIGBIJOY ROY *v.* ATA RAHMAN (1911)
17 C. W. N. 156

3. ———————— *Transfer contrary to local usage of portion of holding, if constitutes forfeiture of tenancy—Surrender of portion of holding—Landlord's right to re-enter that portion—Encumbrance created prior to surrender, effect of.* Where the entire holding of an occupancy raiyat has not been transferred contrary to local usage and custom, it cannot be said that there has been a forfeiture of the tenancy. *Rai Kamaleswari Persad Singh Bahadur* v. *Maharaja Harbullabh Narain Singh Bahadur, 2 C. L. J. 369,* followed. Where a raiyat surrenders a portion of his holding to the landlord, the landlord is entitled to re-enter the portion notwithstanding any subordinate rights which the raiyat may have created upon the particular portion, and the mere fact that the landlord was aware of the encumbrance created by the raiyat, cannot take away his right of re-entry. *Badan Chandra Das* v. *Rajeswari Debya, 2 C. L. J. 570,* and *Rajendra Kishore Adhikari* v. *Chandra Nath Dutta, 12 C. W. N. 878,* referred to. GAGAN CHANDRA CHOUDRY *v.* ALAK CHAND SAHA (1913) . . **17 C. W. N. 698**

OCCUPANCY HOLDING—*concld*

4 ———————— *Abandonment of question of fact—Usufructuary mortgage—Raiyat if necessary party in suit to recover from transferee* Where an occupancy raiyat mortgaged his non transferable occupancy holding by way of an usu fructuary mortgage for a certain number of years and the mortgagees continued in possession of the land through their *burgadar* even after the expiry of the term and the lower Appellate Court found that the raiyat did not live in the village and had cut off connection with the holding *Held* that these findings amounted to holding that the raiyat had abandoned the jama The mere execution of an usufructuary mortgage might not be sufficient to establish abandonment, whether there has been abandonment of a holding or not is principally a question of fact The conditions prescribed by s 87 of the Bengal Tenancy Act do not preclude a landlord from entering upon a land abandoned by tenant The raiyat was not a necessary party to a suit to recover a non transferable holding from the transferees thereof nor would he be bound by the decree in the suit MONOHAR PAL *v* ANANTA MOYEE DASSEE (1913) **17 C W N 802**

5 ———————— *Transfer of portion without landlord s consent—Surrender by original raiyat to landlord—Landlord if may eject transferee—Abandonment* After the sale by an occupancy raiyat of a portion of his holding the raiyat may surrender that portion or the whole of the holding to his landlord and s 87 cl (7) of the Bengal Tenancy Act is no bar to the landlord ac cepting the surrender as the interest if any of the transferee which the landlord is not bound to recognise is not an incumbrance Upon such surrender the landlord may sue to eject the trans feree as a trespasser *Kabil Sardar* v *Chandra Nath I L R 20 Calc 590*, distinguished. The remedy of the transferee if any is against his vendor RAMONI MOHAN RAY *v* SHEIKH KALI MUDDI (1912) **17 C W N 1101**

6 ———————— *Transfer by tenant of whole—Landlord s right to eject transferee—Disclaimer by original tenant if must be proved—Original tenant if necessary party—Custom of trans ferability—Nazar payment of* In order to entitle a landlord to eject a transferee of the whole of a pay rent need not be proved Unless the *nazar* is fixed by custom the landlord is not bound to recognise a transfer upon payment of *nazar* *Fazl l Karim* v *Satish Chandra Giri 15 C W N 755 756* referred to In a suit by the landlord to eject a transferee of a non transferable holding the transferor is not a necessary party CHAND PRAMANIK *v* ROMONY MOHAN RAY (1912) **17 C W N 1105**

OCCUPANCY TENANT

See KHOTI SETTLEMENT ACT (BOM I OF 1880) ss 33 (c) 40 (a) RR I III VIII **I L R 37 Bom 284**

OFFICER IN THE ARMY.

——— **salary of—**

See CIVIL PROCEDURE CODE (ACT V OF 1908) *s 60 cl. (2) (b)* **I L R 37 Bom 26**

OFFICIAL ASSIGNEE

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 80 **I L R 37 Bom. 243**

——— **duties and rights of—**

See SALE OF GOODS **I L R 40 Calc 523**

——— **title of—**

See INSOLVENCY **I L R 40 Calc 78**

OMISSION

See CHARGE **I L R 40 Calc 168**

——— **to serve notice—**

See EXECUTION OF DECREE **I L R. 40 Calc 45**

ONUS OF PROOF

See BURDEN OF PROOF

See CARRIERS **I L R 40 Calc 716**

See EXECUTOR SALE BY **I L R 36 Mad 575**

See RAILWAY **I L R. 37 Bom 1**

ORAL PROMISE

See EVIDENCE ACT (I OF 1872) s 92 **I L R 36 Mad 19**

ORPHAN

——— **adoption of—**

See LIMITATION ACT (IX OF 1908) SCH I ART 18 **I L R 37 Bom 513**

OSTENSIBLE MEANS OF SUBSIST ENCE

———————— *Conducting the play of ring game—Criminal Procedure Code (Act V of 1898) s 109* The conducting of the ring game is an ostensible means of subsistence within the meaning of s 109 of the Criminal Pro cedure Code *Hari Sing* v *King Emperor, 6 C L J 708* referred to BANGALI SHAH *v* EMPEROR (1913) **I L R. 40 Calc 702**

OUDH ESTATES ACT (I OF 1869)

——— **ss 2, 3, 8, 10 22—**

———————— *Summary and regular settlements of Oudh—Villages settled on grantee* ... *partible there being no intention shown to incorporate them with the impartible property* At the summary

OUDH ESTATES ACT (I OF 1869)—*concld.*

——— ss. 2, 3, 8, 10, 22—*concld.*

settlement of Oudh, an order was made on the 5th of October, 1859, for the settlement of certain villages with the ancestor of the parties to these appeals who, however, did not execute his *kabuliat* until the 13th of October, 1859, and so not within the time-limit specified in s. 3 of the Oudh Estates Act (I of 1869), namely, "between the 1st of April, 1858, and the 10th of October, 1859." At the regular settlement, shortly afterwards, the grantee recovered decrees for possession of other villages and subsequently acquired other properties by purchase. In respect of all the settled villages his name was entered in Lists 1 and 2 prepared under the statutory provisions of s. 8 of the Act. In a suit for partition to which the defence was that all the property was impartible: *Held*, (affirming the decisions of the Courts in India), that the grantee (the defendant) was on the construction of the provisions of Act I of 1869 relating thereto, a "talukdar," and the villages so settled with him formed, within the meaning of the Act, an "estate" which was impartible and descendible to a single heir. On a question whether the delay in executing the *kabuliat* deprived the taluqa of the character of an "estate" defined in s. 2 of the Act, the Judges of the Judicial Commissioner's Court differed in opinion. *Held*, in the absence of an express declaration that non-execution within the time specified would be fatal to the right given to the grantee by s. 3, that no such construction could be put on that section; but the execution of the *kabuliat* related back to the date of the settlement, namely, the 5th of October 1859. As to the after-acquired properties the defendant contended that by the custom of the family they became part of the original estate and were therefore not subject to the ordinary Hindu law of inheritance: *Held*, (affirming the decisions of both the Courts below), that the evidence was insufficient to establish that custom; that no intention of the taluqdar was shown to incorporate the subsequently acquired properties with the taluqa, as was necessary on the authority of the case of *Parbati Kumari Debi* v. *Jagadis Chandra Dhabal*, *I. L. R. 29 Calc. 433, 453*; *L. R. 29 I. A. 82, 98*, and that the plaintiff was therefore entitled to a decree for his share (one-half) of such properties as being partible. JANKI PRASAD SINGH v. DWARKA PRASAD SINGH (1913) . . . . I. L. R. 35 All. 391

OWNERSHIP.

——— entry of, in record-of-rights.

See MAHOMEDAN LAW—ENDOWMENT.
I. L. R. 40 Calc. 297

P

PANJAB LAND REVENUE ACT (XVII OF 1887).

——— s. 44—

See MAHOMEDAN LAW—ENDOWMENT.
I. L. R. 40 Calc. 297

PARDON—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 337, CL. (*3*).
I. L. R. 37 Bom. 146

PARLIAMENT, MEMBER OF.

——— *Making contract with Secretary of State for India in Council, if forfeits seat—Public service, for or on account of which such contract made, if comprises public service of the Crown anywhere—Place where such contract made if material—22 Geo. III, c. 45 (1782), s. 1—41 Geo. III, c. 52 (1801), s. 4—Secretary of State for India, if a British Officer and if may discharge duties of His Majesty's other Secretaries of State—21 & 22 Vict., c. 106, Government of India Act, 1858, s. 65—Secretary of State in Council, if a corporation or a legal personality—3 & 4 Will. IV, c. 41. Judicial Committee Act, 1833, s. 4—Construction of Statute ejusdem generis, later Act if a surplusage or ex abundante cauteld.* Sir Stuart Samuel, being a member of the House of Commons, was partner of a firm which made contracts with the Secretary of State for India in Council for borrowing money on short loans, for purchasing India Council Bills and India Treasury Bills, for subscribing to India Government loans, and for purchasing silver for the purposes of the Indian currency: *Held*, that Sir Stuart Samuel forfeited his seat in the House of Commons, the contract having been made for the public service of the Crown in India and with one of His Majesty's Secretaries of State. S. 1 of 22 Geo. III, c. 45, must be taken to extend to such service and to the Secretary of State for India. The public service required by the Statute need not be one either executed or requited within Great Britain or paid for out of any particular fund. The Secretary of State for India is in the fullest sense an officer of British Government. A contract is none the less made with the Secretary of State for India that he has to obtain the concurrence of his Council before making it and that he and his Council are designated by s. 65 of the Government of India Act of 1858 (21 & 22 Vict., c. 105) as liable to be sued or to sue on it as a corporate body. Neither the personality of the Secretary of State nor that of his Council is merged in any Corporation by the Statute. Their responsibilities and duties thereunder are separate and sometimes conflicting, and it is only for purposes of litigation that they can be treated as though they were but one legal personality. *In the matter of* SIR STUART SAMUEL (1913) . . . . . 17 C. W. N. 735

PARTIAL DECREE.

See REFUND OF COURT-FEE.
I. L. R. 40 Calc. 365

PARTIES.

See BOOKS OF REFERENCE.
I. L. R. 40 Calc. 898

See CIVIL PROCEDURE CODE, 1908, O. XXXIV, R. 1; O. I, R. 9
I. L. R. 35 All. 441

See FRAUD . . I. L. R. 37 Bom. 217

PARTIES—*concld*

See MORTGAGE . I. L. R. 35 All. 247

See VENDOR AND PURCHASER I L. R. 35 All. 273

——— array of—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s 52 . I. L. R 37 Bom. 427

——— change of, in pending litigation—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s 52 . I. L R 37 Bom. 427

——— joinder of—

See HINDU LAW—JOINT FAMILY I. L R 37 Bom. 340

——— *Religious Endowment—Suit against the sole surviving member of the committee and the superintendent of a temple—Death of the sole surviving member—Substitution of the adopted son—New committee added as party—Cause of action, abatement of—Civil Procedure Code (Act V of 1908), O XLI, r 20, O XXII, r 10, O I, r. 10, Religious Endowments Act (XX of 1863), s 14* A suit, brought against the sole surviving members of a committe of management appointed under s 3 of the Religious Endowments Act, 1863, and against the superintendent of a temple, for their removal from the committee and from the office of superintendent respectively, was dismissed by the District Judge Pending the appeal, the 1st defendant died, and his adopted son was brought on the record as a party by the plaintiffs Subsequently, a new committee was appointed and added also as a party and the appeal was proceeded with against the adopted son, the superintendent and the new committee *Held*,

v *Sadasiv Sakharam Shet, I L R 21 Bom 229*, referred to *Held*, further, that the suit could not be maintained as against the 2nd defendant alone, and that the appeal, as now constituted, was incompetent BHIMA ROUT *v* DASARATHI DASS (1912) . . I L R. 40 Calc. 323

PARTITION.

See CIVIL PROCEDURE CODE, 1908 s 47 I L R 35 All 243

See CIVIL PROCEDURE CODE, 1908, O XX, R 18 I L. R 35 All. 159

See HINDU LAW—JOINT FAMILY I. L R. 35 All 543

See HINDU LAW—PARTITION. I. L R. 35 All. 41, 337

See PARTITION ACT (IV OF 1893).

See TRANSFER OF PROPERTY ACT (IV OF 1882), s 52 I. L. R. 37 Bom 427

PARTITION—*contd*

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901) ss 107, 111 I L. R. 35 All. 527

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901) ss 107, 111, 112 I. L. R 35 All. 548

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), ss 111, 112, 233(*k*) I. L R. 35 All 126

——— suit for—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s 11 I. L R 37 Bom. 307

See HINDU LAW—ALIENATION I L. R. 40 Calc 966

1 ——— *Consideration—Bond fide claim for separate allotment for marriages of one brother's daughters—Agreement at or before partition to allot—Execution of promissory notes by each brother for his share of the amount—Previous suit for partition—Subsequent suit on promissory note—S 43 Civil Procedure Code (Act XIV of 1882), no bar—Causes of action distinct* An agreement made between parties to a partition, by which one brother was to pay money for the marriages of his brothers' daughters, whether it is made before the partition and subsequently embodied in the deed of partition or made at the time of partition, is a enforceable contract, as the agreement by the father of the daughters to other terms of the partition is sufficient consideration A claim at the time of partition for the allotment of a separate sum of money out of the general funds for the performance of marriages of the daughters of one of the brothers to a partition, is not altogether unfounded according to Hindu law Even otherwise an agreement so to allot would be binding on the persons agreeing as one of the terms of a *bond fide* compromise constituting a settlement between the members of a family, if there was a *bond fide* claim for the same at the time of partition If an agreement so to pay a certain *sum made by the other brothers at the time of* partition becomes split up into various agreements by the execution of separate promissory notes by the other brothers, each for his share, the obligation to pay the amounts of the promissory notes is distinct from the obligation to observe the other terms of the partition; so that a suit first brought for partition against all the brothers (s. 43, Civil Procedure Code, Act XIV of 1882), does not bar the institution of a subse-

Jiva Miya, I L R 7 Bom 134, Sundar Singh v. *Bholu, I L R 20 All 322*, and *Moro Raghunath* v *Balaji Trimbak, I. L R 13 Bom 45*, followed. *Appasami* v *Ramasami, I. L R 9 Mad 279*, and *Shanmugam Pillai* v *Syed Gulam Ghose, I. L. R 27 Mad 116*, distinguished *Preonath Mukerji* v. *Bishnath Prasad, I. L. R 29 All. 256*, dissented from

PARTITION—contd.

PER CURIAM: If several promissory notes are executed for portions of the same debt, each promissory note creates a cause of action, and this would be so even if it be assumed that a suit might be instituted for the whole debt on the original cause of action. ANANTANARAYANA IYER v. SAVITHRI AMMAL (1913) . . I. L. R. 36 Mad. 151

2. ———————————— Partition, suit for—Misjoinder of causes of action and parties—Prejudice—Res judicata amongst co-defendants—Civil Procedure Code (Act V of 1908), s. 11. A suit for partition determines the shares of the co-sharers amongst themselves, and each co-sharer, whether plaintiff or defendant, demanding a separate block for himself may prove his share and get a block for himself. Where the causes of action in respect of different items of property, the subject-matter of a suit for partition, appeared to be different, and the parties concerned in the claim to one such item appeared to be less numerous than those concerned in the claim for the other item, the joining of them in one suit caused misjoinder of parties and causes of action. But such misjoinder of causes of action and parties did not entitle the appellant (who raised this point in his written statement) to have the decree set aside, particularly as the misjoinder had not prejudiced him, and as, if the two separate suits had been brought on the separate causes of action, they would probably have had to be tried together. Where a co-sharer of the present plaintiff had sued to have his title declared to a taluk and the plaintiff and the defendant appellant had been made co-defendants, and the decision was that there had been a binding private partition confining the interests of each co-sharer to the allotment received by his or her predecessor and that that was not merely an informal division for convenience of possession: *Held,* that, though the question of a previous partition was one which not only might and ought to have been, but actually was made the ground of defence in the former suit within the meaning of s. 11, Expln. IV, Civil Procedure Code, and though the present plaintiff was acting in that suit in the same interest as her cousin, it was impossible to hold that in the suit in which she and the appellants were co-defendants there was a conflict of interest between them, and that the judgment defined their rights and obligation *inter se.* The case accordingly did not come under the rule relating to *res judicata* among the defendants as laid down in *Gurdeo Singh* v. *Chandrika* [...]*h, I. L. R. 36 Calc. 193.* SARODA PROSAD ROY [...]HURY v. KAILASH BASHINI GUHA (1912) 17 C. W. N. 128

[...] ———————— Partition amongst [...]ehold interest purchased in execution, [...]owner—Tenancy of the others, if [...]ancy Act (VIII of 1885), s. 12 [...]tice, if necessary. Where, [...] co-owners, a share of a [...] on behalf of all the [...] one of them: *Held,* [...]o-owners to pay

rent to the landlord of the taluk ceased. *Prosunna Coomar Singha* v. *Ram Coomar Ghose, I. L. R. 16 Calc. 640, R. D. Mehta* v. *Godadhar Rai, I. L. R. 37 Calc. 683 : 14 C. W. N. 83, Promatha nath* v. *Kalli Prasanna, I. L. R. 28 Calc. 744,* referred to. S. 12 of the Bengal Tenancy Act, the operation of which is confined to transfers by sale, gift, or mortgage, does not apply to a case of transfer by partition which does not therefore require to be registered and notified as contemplated by s. 12. RAMDHONE DHUR v. SARUP CHANDRA SEN (1912) 17 C. W. N. 313

[...]NJAB LAND [...]F 1887).

——— s. 44—

See MAHOMEDAN LAW [...]

I. L. R. [...]

PARTITION ACT (IV OF 1893).

——— ss. 1, 2, 3—*Partition—Mortgagee rights in a revenue paying mahal—Application for sale by owners of less than a moiety—United Provinces Land Revenue Act (III of 1901), s. 107.* Mortgagee rights merely in a revenue-paying mahal do not fall within the purview of the United Provinces Land Revenue Act, 1901, for the purposes of partition: consequently the provisions of the Partition Act, 1893, apply to the partition amongst co-owners of such rights. But an order for sale of the mortgagee rights under s. 2 of the Partition Act will not be valid unless based upon the request of a party or parties interested to the extent of one moiety or upwards. BANKE LAL v. SHANTI PRASAD (1913) I. L. R. 35 All. 387

PARTNER.

——— liability of—

See TRADE-MARK. I. L. R. 40 Calc. 814

PARTNERSHIP.

See ABKARI ACT (BOM. V OF 1878). ss. 16, 43 . I. L. R. 37 Bom. 320

———————— *Fresh agreement—Novation—Suit for an account on the footing of continuance of original partnership—Suit not maintainable.* A testator appointed his widow as the guardian of his minor children and executrix (by tenor) of his will. On his death the widow consented to the retention of the testator's share in a partnership business by the surviving partners and subsequently to a transfer of the same to another business. In an action brought by one of the testator's sons as administrator against the surviving partners for an account of all the assets of the testator at the time of his death retained, and employed by the defendants in their business: *Held,* dismissing the suit, that t[...] testator's widow was perfectly competent as [...] executrix to enter into the arrangement, [...] was a *novatio,* with the surviving partners so [...] bind the estate, and t[...] [...]st the [...] on the footing of [...] of the [...] partnership was [...]ble. NASSARWANJI v. [...] [...]JI ([...] 37 [...]

PARTNERSHIP ACCOUNT

——— suit for—

See LIMITATION ACT (XV OF 1877) I L R. 36 Mad 185

PATILKI VATAN

See VATAN I L. R. 37 Bom 81

PATTA

——— *Suit to enforce acceptance of—Zamindari land converted into wet with Government water—Consideration failure of—Enhancement—Rent Recovery Act (VIII of 1865) s 11* Certain dry zamidari lands were converted into wet by the use of water from a channel constructed and maintained solely by Government *Held* that there was no consideration for the zamindar to levy enhanced rent notwithstanding a stipulation for enhancement should the land be cultivated as wet The conditions laid down in the Rent Recovery Act (Mad VIII of 1865) s 11 not being present the zamindar was precluded from levying enhanced rent SRIMATU RAJAH MALLIKARJUNA PRASADA NAIDU *v* SUBBAYYA (1913) I L R 36 Mad 4

PENAL CODE (ACT XLV OF 1860)

——— ss 37, 302, 304

1 ——— **Murder**—*Culpable homicide not amounting to murder—Fatal assault with lathis by three persons acting in concert* Three persons brothers attacked with *lathis* a fourth against whom they bore a grudge and beat him with great severity so that he died shortly afterwards His skull was badly fractured and numerous other injuries were inflicted upon him It did not appear which injuries were caused by which of the assailants but the evidence showed that they were acting in concert and intended to cause such bodily injury as was likely to cause death *Held* that all three assailants were guilty of murder *King Emperor* v *Subbappa Chunnappa 15 Bom L R 303* and *King Emperor* v *Kanhai I L R 35 All 329* followed *Emperor* v *Bhola Singh I L R 29 All 282 Queen Empress* v *Duma Baidya I L R 19 Mad 483 Gouridas Namasudra* v *Emperor I L R 36 Calc 659 Empress* v *Dharam Rai All Weekly Notes (1887) 236 Dhian Singh* v *King Emperor 9 All L J 180* distinguished EMPEROR *v* RAM NEWAZ (1913) I L. R 35 All. 506

2 ——— *Murder—Culpable homicide not amounting to murder—Fatal assault with lathis by several persons acting in concert* Five men—members of the same family—assaulted an unarmed man and beat him with their *lathis* They knocked him down and continued beating him with the result that he died then and there Another man who came to the rescue of the first was also knocked down and beaten by the same five men with a similar result *Held* that all five men were in each case guilty of the offence of murder *Dhian Singh* v *King Emperor 9 All L J 180* dissented from EMPEROR *v* HANUMAN (1913) I L R 35 All 560

PENAL CODE (ACT XLV OF 1860)—*contd*

——— ss 37, 302, 304—*concld*

——— s 90— *Consent obtained on misrepresentation illegal—Penal Code (Act XLV of 1860) s 366—Kidnapping a girl with such consent obtained from guardian* The offence of kidnapping consists in taking or enticing a minor out of the keeping of the lawful guardian of such minor without the consent of such guardian If a minor is taken with the consent of the guardian and subsequently married improperly without the consent of the guardian to any person such improper marriage would not by itself amount to kidnapping A consent given on a misrepresentation of a fact is one given under a misconception of fact within the meaning of s 90 Indian Penal Code and as such is not useful as a consent under the Penal Code A misrepresentation as to intention of a person (in stating the purpose for which the consent is asked) is a misrepresentation of a fact within the meaning of s 3 of the Evidence Act *Per* CURIAM Equally useless as a defence is a consent obtained by a fraud or coercion *R* v *Hopkins Car & Mar 254* followed *Re* JALADU (1913) I L R 36 Mad 453

——— ss 141 143 148, 326—*Rioting—Maintaining a right lawful common object—Enforcing a right meaning of* The complainant s party without the permission of the petitioners constructed a dam across a pyne exclusively belonging to the petitioners who had obtained an injunction from t [illegible] party [illegible] use ar [illegible] ers in [illegible] by th [illegible] struck by the petitioners and the petitioners were convicted of rioting and of causing grievous hurt *Held* that after the Civil Court decree and injunction the petitioners could not be held to be enforcing a right within the meaning of s 141 (4) and the presence of the complainant s party in opposing the petitioners was a criminal trespass [illegible] not possession over the subject of the right and therein lies the distinction between 'enforcing a right and maintaining a right A party in possession is entitled to resist and repel an [illegible] g would be in [illegible] ANDAN PRO [illegible]

[illegible] W N 1132

——— s 146—*Rioting—Dispute regarding possession of land—Title with accused—Lawful common object—Propriety of conviction—Right by private defence—Hurt* Where the petitioners were convicted under ss 148 323 326 329 149 Penal

PENAL CODE (ACT XLV OF 1860)—*contd.*

——— s. 146—*concld.*

Code, some under one, some under all of the sections, the riot relating to a dispute in respect of possession of a plot of land, and the Sessions Judge in appeal found that the occurrence did take place on the land in dispute and the accused took part in it, but that they were in fact entitled to harvest and remove the crops grown on the disputed land, but the District Magistrate in his explanation pointed out that the findings of the Judge were not in accordance with the weight of the evidence, the High Court refused to go behind the findings of the Sessions Judge, and *held* that the conviction under ss. 148, 326-149, Penal Code, could not stand; and so far as the offence under s. 323 was concerned the accused did not in the circumstances of the case exceed their right of private defence. JHALKU TEWARI *v.* KING-EMPEROR (1913)

17 C. W. N. 1081

——— ss. 146, 147—

See JURY, TRIAL BY

I. L. R. 40 Calc. 367

——— s. 147—

See ATTACHMENT.

I. L. R. 40 Calc. 849

——— ss. 147, 323—

See CUMULATIVE SENTENCES.

I. L. R. 40 Calc. 511

——— s. 155—*Person not having property in land nor claiming interest therein if liable — Record of riot-case if admissible.* Where the petitioners were convicted under s. 155, Penal Code, and they had admittedly no property in the land in respect of which the riot took place, but their mother and the wife of one of them had interest therein, and the Sessions Judge in appeal relying on the evidence that the petitioners demanded *kabuliyats* from tenants, found that they were claiming an interest in the land although there was no evidence to prove that the petitioners demanded the *kabuliyats* for themselves: *Held*, that the finding that the petitioners were claiming an interest in the land could not be supported and the conviction under s. 155, Penal Code, must be set aside. That in the case under s. 155, Penal Code, the Magistrate should have excluded the record of the riot case. PRAMOTHA NATH RAY CHOWDRY *v.* KING-EMPEROR (1913)

17 C. W. N. 1247

——— ss. 182, 211—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 403 (*1*).

I. L. R. 36 Mad. 308

——— ss. 182, 193—*Complaint—Statement made to the Magistrate as head of the police and not as a magistrate.* *P* appeared before a District Magistrate and made a statement in which he accused a certain police officer of having beaten him, demanded a bribe of him, and locked him up

PENAL CODE (ACT XLV OF 1860)—*contd.*

——— ss. 182, 193—*concld.*

in the police *howalat*. He stated, however, that he did not wish to make a complaint, but only desired that an inquiry should be made. Nevertheless the Magistrate examined *P* on oath, and subsequently, the charge having been found to be baseless, *P* was convicted under ss. 182 and 193 of the Indian Penal Code. *Held,* that inasmuch as *P* had expressly stated that he did not wish to make a complaint, the statement must be taken to have been made to the District Magistrate not as Magistrate, but as head of the district police and the conviction, under s. 193 of the Code could not be upheld. EMPEROR *v.* PHULEL (1912) . . I. L. R. 35 All. 102

——— s. 188—*Order duly promulgated by public servant—Order forbidding persons to enter railway premises except for travelling.* *Held,* that the public have a right to enter upon railway premises for many purposes other than travelling, and an order forbidding persons to enter a railway station except for *bonâ fide* purposes of travelling would be an illegal order. In the particular instance, however, it did not appear that the order in question was issued by any authority which, supposing it to be otherwise legal, would have had power to issue it. EMPEROR *v.* RAMA (1913) I. L. R. 35 All. 136

——— ss. 193, 471—

See SANCTION FOR PROSECUTION.

I. L. R. 40 Calc. 584

——— ss. 193, 511—*Court—District Judge hearing election petition under s. 22 of the Bombay District Municipalities Act (Bom. Act III of 1901) is a Court—False evidence before the District Judge —Sanction for prosecution—Criminal Procedure Code (Act V of 1898), s. 195.* A District Judge hearing an election petition under the provisions of s. 22 of the Bombay District Municipalities Act (Bombay Act III of 1901), is a "Court" within the meaning of s. 195, cl. (*b*) of the Criminal Procedure Code, 1898. No prosecution for attempting to fabricate false evidence (ss. 193 and 511 of the Indian Penal Code) before the District Judge can be instituted without having obtained sanction as required by s. 195 of the Criminal Procedure Code, 1898. *Raghubuns Sahoy* v. *Kokil Singh*, *I. L. R. 17 Calc. 872*, followed. *In re* NANCHAND SHIVCHAND (1912)

I. L. R. 37 Bom. 365

——— s. 199—*Sanction to prosecute—Prosecution based on alleged false declaration—Declaration inadmissible in evidence.* A declaration, before it can be made the foundation of a prosecution under s. 199 of the Indian Penal Code, must be one which is admissible in evidence and which the Court before which it is filed is bound or authorized by law to receive in evidence. EMPEROR *v.* RAM PRASAD. (1912)

I. L. R. 35 All. 58

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 211—

See COMPLAINT DISMISSAL OF
I L R 40 Calc 444

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s 250
I L R 37 Bom 376

See JURISDICTION OF CRIMINAL COURT
I L R 40 Calc 360

——— ss 213, 214—*Screening offence—Restitution of property for screening offence—The* ... *been commit* ... *shed G gave* ... *ad M pledged* ... es which con stituted such pledging an offence of criminal breach of trust The jewellery was later returned ... not to prose ... ust ... ach ... ac quitted S and G were next tried for offences under ss 213 and 214 of the Indian Penal Code in that they offered and took restitution of property in consideration of screening an offence The trying Magistrate convicted them of the offences charged holding that for the purposes of their case *M* must be deemed to be guilty of the offence of criminal breach of trust. On appeal *Held* acquitting the accused that they could not ...

SANALAL LALLUBHAI (1913)
I L R 37 Bom 658

——— s 297—

See GRAVE YARD
I L R 40 Calc 548

——— ss 300, 325—*Murder—Grievous hurt—Common intention—Deadly assault with lathis on an unarmed person—Presumption* Four persons armed with *lathis* attacked and severely beat a fifth who was unarmed over a dispute about irrigation The person attacked died in consequence of this beating and it was found that he had received several severe blows on the head the result of which was that the bones of the skull were broken to pieces and also other injuries about the body most of the injuries having probably been inflicted whilst the person attacked was on the ground but the evidence did

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s 300—*concld*

not disclose which of the assailants caused which of the injuries *Held*, that all four assailants were properly convicted of murder under the fourth clause of s 300 of the Indian Penal Code and that the inference was not justified that the common intention of the assailants was not more than the causing of grievous hurt EMPEROR v KANHAI (1912) I L R 35 All 329

——— s 379—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) ss 397 123
I L R 37 Bom 178

——— s 406—

See CRIMINAL PROCEDURE CODE s 179
I L R 35 All 29

——— ss 406, 408—*Criminal breach of trust—Water works inspector misappropriating water* ... *credited to the* ... water works ... e within muni ... nected with a municipal water main and accepted a yearly pay ment as water tax from his tenants, but neither informed the municipal board that the connection had been made nor credited to the board the money which he received as water tax from his tenants it was *held* that he was properly convicted under ss 406 and 408 of the Indian Penal Code whether or not he might have been punish able under the United Provinces Water Works Act 1891 EMPEROR v BIMALA CHARAN ROY (1913) I L R 35 All 361

——— ss 408, 477A—

See CHARGE I L R 40 Calc 318

——— s 411—

See DISHONESTLY RECEIVING STOLEN PROPERTY I L R 40 Calc 990

——— ss 411, 414—*Dishonestly receiving stolen property—Assisting in the concealment of stolen property—Government currency note received in the course of business—Jurisdiction* Where a Government currency note of the value of Rs 1 000 was traced seven months after the loss to a shroff who carried on business in Bombay and through whose hands currency notes would find their way in the course of business though he could not name the person from whom he had received the currency note *Held* on a complaint under ss 411 414 of the Indian Penal Code that the Chief Presidency Magistrate was right in refusing to issue process RAM CHANDRA SAHA v HAJI MEAH HAJI ABDULLAH (1913)
17 C W N 1129

——— ss 415 417—*Attempt to cheat—Dishonest intention—Facts proved not sufficient to support conviction—Evidence gone into in revision* Where according to the Rules regulating the levy of octroi on certain goods brought within the Sam

PENAL CODE (ACT XLV OF 1860) —*contd.*

——— ss. 415, 417—*concld*

balpur Municipality, the goods had to be presented in bulk at the exit station out-post with an application for a pass in a prescribed form, such application being in the ordinary course handed by the applicant or his agent to the out-post mohurer who made it over to the daroga whose duty it was to check the application and to certify the description and quantity of the goods actually presented and then to make out the *chalan* or pass which had to be signed by the mohurer, and one of the Rules provided that a municipal member must attest the check at the exit station out-post and in the absence of such attestation the exit mohurer shall not sign the *chalan*, and another Rule provided that the absence of the mohurer's signature on the *chalan* is one of the reasons for which an application for a refund of duty allowed in certain cases should be rejected; and where on a certain day the petitioner at the request of the daroga consented to act as Municipal member at the out-post in respect of goods brought there to be passed through and among such goods brought to the out-post were some cartloads of goods belonging to the petitioner's firm, and in the application for a pass in respect of these goods which was not signed by the petitioner himself but in which his name was written by a gomasta (which application according to the case for the prosecution the petitioner himself handed to the daroga with whom he was in collusion), the goods were entered as 460 bags of linseed and 40 bags of rice but as a matter of fact only 230 bags of linseed were actually brought to the out-post and according to the evidence of the daroga the petitioner assured him that he would make good the deficiency on the following day; and it was found that the petitioner was cognisant of the application, of the details therein entered and of the number of bags brought to and passed through the out-post but the petitioner did not attest the check in respect of his own goods and did not attempt to induce the mohurer to sign the chalan (which the mohurer in fact did never sign), nor did he do anything further to carry out the purpose imputed to him, and made no attempt to obtain a receipt for 500 bags as representing the number actually passed through the out-post, and on the next day when he tried to send goods to the railway station some of his carts were intercepted and prevented from reaching the railway station by the municipal authorities. *Held*, that the facts proved were not sufficient to support the conviction of the petitioner for an offence of cheating. The evidence on the record fell short of the evidence required to prove dishonest mind or dishonest purpose on the part of the petitioner. BIRJRAJ MARWARI *v.* THE KING-EMPEROR (1912) . . . **17 C. W. N. 294**

——— ss. 457, 511—*House-breaking—Attempt—Burglars digging a hole in a wall but not boring it through owing to interruption by third persons.* The accused dug a hole in the wall of the complainant's dwelling house, during the night,

PENAL CODE (ACT XLV OF 1860)—*contd.*

——— ss. 457, 511—*concld.*

with intent to complete that hole in order to make their entry into the house through it; and, having so entered, to commit a theft in the house. In fact, the hole was not completed in the sense that it did not completely penetrate from one side of the wall to the other, as the accused were interrupted before they could complete it. The accused were on these facts convicted by the trying Magistrate of the offence of attempting to commit house-breaking by night. On appeal, the Sessions Judge reversed the conviction and acquitted the accused on the ground that the accused's acts did not amount to an attempt to commit house-breaking, but only to a preparation. The Government of Bombay having appealed against the order of acquittal: *Held*, setting aside the order of acquittal, that the accused's acts did in law amount to an attempt, for the actual transaction, the distinct overt act, was begun and carried through to a certain point but was not completed by reason of the accused's being interrupted. EMPEROR *v.* CHANDKHA SALABATKHA (1913)

I. L. R. 37 Bom. 553

——— ss. 463, 467—*Forgery—Forgery committed to conceal fraud already committed.* A Kulkarni misappropriated certain moneys which the *rayats* had paid to him as irrigation cesses. Some time afterwards, he forged certain receipts purporting to come from the Government treasury for those moneys, with the object of concealing the misappropriation. The accused helped the Kulkarni in the forgery, by forging the signatures on the receipts. He was paid Rs. 25 for the work. The accused was, on these facts, charged with the offence of forgery. The Sessions Judge acquitted the accused on the ground that s. 463 of the Indian Penal Code penalised the making of a false document, only if it was made (*inter alia*) "with intent to commit fraud or that fraud may be committed," whereas no such intent could be ascribed where the fraud had already been fully committed. The Government of Bombay appealed against the order of acquittal: *Held*, setting aside the order of acquittal, that the accused had committed forgery, although it was effected in order to conceal an already completed fraud. *Lolit Mohan Sarkar* v. *Queen-Empress, I. L. R. 22 Calc. 313, Emperor* v. *Rash Behari Das, I. L. R. 35 Calc. 450*, and *Queen-Empress* v. *Sabapati, I. L. R. 11 Mad. 411.* followed. *Empress of India* v. *Jiwanand, I. L. R. 5 All. 221, Empress* v. *Mazhar Hussain, I. L. R. 5 All. 553*, and *Queen-Empress* v. *Girdhari Lal, I. L. R. 8 All. 653*, dissented from. EMPEROR *v.* BALKRISHNA WAMAN (1913)

I. L. R. 37 Bom. 666

——— ss. 463, 471—*"Using," definition of—Criminal Procedure Code (Act V of 1898), ss. 17 and 531—Jurisdiction —Commitment to Court, not possessing jurisdiction, bad—Transfer.* A forged document was produced in Court in obedience to an order of the Court. *Held*, that the production did not amount to using the document

PENAL CODE (ACT XLV OF 1860)— *contd*

——— ss 463, 471—*concld*

as genuine An involuntary production of a document in Court cannot be said to amount to a use of it The expression using a document is apparently used in the sense of its being put forward *in some way for one of the purposes men tioned* in s 463 Indian Penal Code Although by virtue of s 531 Criminal Procedure Code an order in an inquiry made by a Magistrate not having local jurisdiction will not be set aside unless there is in fact a failure of justice yet when a committal is made by such a Magistrate to a Court of Session which has no jurisdiction to try the case under s 177 Criminal Procedure Code such commitment is illegal The High Court has no power to transfer a case thus commit ted to a Court not having jurisdiction to another Court having jurisdiction The commitment must be quashed ASSISTANT SESSIONS JUDGE NORTH ARCOT *v* RAMAMMAL (1913)

I L R 36 Mad 387

——— ss **464 465, 467**—*Criminal Procedure Code (Act V of 1898) ss 221 222 223 342—Making a false document—Forgery of valuable security—Falsification of part of a document which is surplusage—Evidence—Onus—Defect in charge —Omission to set out intent on in charge* Where the accused was convicted of having forged a kabuliat executed by himself in favour of his landlord *C B* whose name appeared on the document as a witness and there were two other witnesses to the document and it was admitted that the accused who was an illiterate man did not make the false document himself and it was not established that the inten tion of the accused was to fraudulently bind the landlord by his alleged signature as witness and the case for the defence was that it was not the landlord *C B* who signed the name as witness but another person of the same name and the Sessions Judge held that the onus was on the defence of showing that this *C B* whose name appeared on the document was a real person and signed the deed and where the Sub Regis trar who registered the document and held an enquiry in connection therewith and saw with his own eyes that the accused was in possession of

for sign the forged [illegible] Making a false docu ment is one thing and causing a false document to be made is another One is an offence under s 465 Penal Code the other is an act at most of abetment The part of a document in order to come within the definition of false document

document was made signed sealed and executed

PENAL CODE (ACT XLV OF 1860)— *contd*

——— ss **464, 465, 467**—*concld.*

by or by the authority of a person by whom or

some material effect on the transaction A mere surplusage would not invalidate a document In the present case even admitting that the name of *C B* was a fictitious name it would not make

Sessions Judge was wrong in throwing the onus on tatement of HAIDAR ALI

[illegible] W N 354

——— s **471**— *Using definition of* The mere production of a document in obedience to the sommons of a Court cannot amount to using within the meaning of s 471 Indian Penal Code *Assistant Sessions Judge North Arcot v Ramammal I L R 36 Mad 387* followed

document within the meaning of s 471 Indian Penal Code A mere statement that a document is genuine does not amount to using it as genuine *Re* MUTHIAH CHETTY (1913)

I L R 36 Mad 392

——— ss **471 474**—*Whether convictions under can stand together—Forgery—User whether mere filing in Court—Guilty knowledge presump tion of if rises from mere filing of a document being interested in establishing its contents* The mere fact that a litigant is interested in estab lishing the contents of a forged document filed by him in support of his case does not raise the presumption that he filed it knowing it to be forged Where however the accused

was not consistent with his innocence and want of guilty knowledge The filing of a forged docu ment as the basis of a plaint or as a necessary sequel to the pleas in the plaint constitutes an user of it within s 471 Penal Code and it is incum bent on the person using it to show that he filed the document in all good faith believing it to be genuine *Ambica Prasad Singh* v *Emperor I L R*

PENAL CODE (ACT XLV OF 1860)—*concld.*

——— s. 471, 474—*concld.*

35 Calc. 820, referred to and explained. Convictions of offences under ss. 471 and 474, Penal Code, in respect of the same document cannot stand together. The two offences must be charged in the alternative. *Queen* v. *Nuzur Ali, 6 N. W. P. 39*, followed. MOBARAK ALI *v.* THE KING-EMPEROR (1912) . . . . . 17 C. W. N. 94

——— ss. 482, 485, 486—

See TRADE-MARK I. L. R. 40 Calc. 281

——— s. 499—

See DEFAMATION.

I. L. R. 40 Calc. 433

——— *Defamation—Absolute privilege, doctrine of, applicable under s. 499—Accused, statement of, in course of judicial proceedings.* A person charged with an offence was, on his trial, asked by the Magistrate what he had to say and in reply made a statement defamatory of one of the prosecution witnesses: *Held*, that the statement was absolutely privileged and that he was not liable to be punished in respect thereof for an offence under s. 499, Indian Penal Code. Although the English doctrine of absolute privilege is not expressly recognized in the section it does not necessarily follow that it was the intention of the Legislature to exclude its application from the law of this country. *In re* VENKATA REDDY (1913)

I. L. R. 36 Mad. 216

PENALTY.

See COMPANIES ACT (VI OF 1882) s. 74

I. L. R. 35 All. 173

See CONTRACT ACT, s. 74.

I. L. R. 36 Mad. 229

PENSIONS ACT (XXIII OF 1871).

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 9, SCH. II, s. 20.

I. L. R. 37 Bom. 442

——— s. 4—*Collector—Certificate of Collector—Civil Court—Jurisdiction—Suit for declaration for share in cash allowance—Deshpande Kulkarni Vatan.* The plaintiffs sued for a declaration that they were owners of a share in the Deshpande Kulkarni Vatan which consisted of a cash allowance paid annually from the Government Treasury. They did not produce a certificate from the Collector as required by s. 4 of the Pensions Act (XXIII of 1871). *Held, that the* suit in the absence of a certificate from the Collector could not be entertained in a Civil Court owing to the provisions of s. 4 of the Pensions Act, 1871, inasmuch as the suit was clearly one relating to a pension or grant of money conferred by the British Government. *Babaji Hari* v. *Rajaram Ballal, I. L. R. 1 Bom. 75*, followed. *Govind Sitaram* v. *Bapuji Mahadeo, I. L. R. 18 Bom. 516*, distinguished. DWARKANATH AMRIT *v.* MAHADEO BALKRISHNA (1912) . I. L. R. 37 Bom. 91

PENSIONS ACT (XXIII OF 1871)—*concld.*

——— s. 4 (iii)—*No distinct grant of land revenue—Section, no bar—Hereditary Village Offices Act (Madras Act III of 1895), s. 21, in "any claim to recover emoluments of an office," meaning of—Regulation VI of 1831—No jurisdiction for Revenue Courts to decide what are emoluments or to decree possession—Res judicata.* S. 4 of the Pensions Act (XXIII of 1871) is a bar to a civil suit only where the Court is able to hold that there was distinct grant of the land revenue itself, and where there is nothing to show that in the hands of Government before the grant of the *inam*, the land was treated as liable for the payment of land-revenue or that the Government intended to split up its ownership into *melvaram* and *kudivaram* or to make a distinct grant of the land-revenue ; s. 4 of the Pensions Act cannot have any application with reference to a suit for the recovery of such land alleged to have been granted as *inam*. *Her Highness Mathu Sri Jeijamba Bai Sahib* v. *Secretary of State (Appeal No. 10 of 1908)* explained and followed. The words "any claim to recover the emoluments of an office." The Madras Hereditary Village Offices Act (Madras Act III of 1895), s. 21 can only mean a claim to recover what in fact are the emoluments of an office or possibly what are claimed by the plaintiff to be the emoluments of an office, and cannot by any rule of construction be extended to include a claim to recover what the plaintiff denies to be the emoluments of an office but what the defendant alleges to be such emoluments. *Kasiram Narasimhulu* v. *Narasimhulu Patnaidu, I. L. R. 30 Mad. 126*, explained and distinguished. Under Madras Regulation VI of 1831, which was repealed by Madras Act III of 1895, the Revenue Courts had no jurisdiction to decide what were the emoluments of an office or to declare possession against a person alleged to be a trespasser. Hence neither s. 21 of Act III of 1895 nor Regulation VI of 1831 is bar to the suit. *Ravutha Koundan* v. *Muthu Koundan, I. L. R. 13 Mad. 41*, referred to. Therefore a decision under the Regulation VI of 1831 cannot operate as *res judicata* with reference to a suit for lands in a civil Court. SECRETARY OF STATE *v.* SUBBARAYUDU (1913) . I. L. R. 36 Mad. 559

PERJURY.

——— *Sanction for prosecution—Criminal Procedure Code (Act V of 1898), s. 195—Conditional sanction.* A sanction to prosecute for perjury given under s. 195, Criminal Procedure Code, cannot be conditional. *Re* MUNEYYA *(1913)*

I. L. R. 36 Mad. 471

PERPETUITIES.

See WILL . I. L. R. 40 Calc. 192

PERSONAL DECREE.

See CHARGE . I. L. R. 36 Mad. 493

PERSONA DESIGNATA.

See NAIKINS . I. L. R. 37 Bom. 116

PERSONAL LIABILITY

See FOREIGN JUDGMENT
I L R 36 Mad 414

PETROLEUM

——— *Keeping in possession*

ss 11 and 15 (a) ...
of a finding by the Court that he knew that more than 500 gallons of petroleum were being transported at one time on his license, and that he allowed the same to take place with such knowledge by his servant, criminally liable, under ss 11 and 15(*a*) of the Indian Petroleum Act (VIII of 1899), for the acts of the latter done in contravention ... provides a perso... e punished ...ies it about ... one place

I L R 40 Calc 356

PETROLEUM ACT (VIII OF 1899)

——— ss 11, 15(*a*)—
See PETROLEUM I L R 40 Calc 356

PILGRIM BUSINESS.

——— profits from—
See RECEIVER I L R 40 Calc 678

PLAINT

——— amendment of—
See CIVIL PROCEDURE CODE (ACT V OF 1908), O VI, R 17
I L R 36 Mad 378

——— rejection of—
See COURT FEE I L R 40 Calc 615

PLANTERS' LABOUR ACT (MAD I OF 1903)

——— ss 24 35—*Imprisonment for refusal to perform contract, extent of* Prosecutions and punishments under the Planters Labour Act (Madras Act I of 1903) cannot continue indefinitely Only two terms of imprisonment may be awarded once under s 24 and again once under s 35 The refusal of a *maistry* or a labourer under s 35 to perform his contract cannot be treated as a temporary refusal *Re* PANGA MAISTRY (1913) I L R 36 Mad. 497

PLEADER

See BOMBAY REGULATION II OF 1827, s 56 I L R 37 Bom 354

——— *If can compromise suit unless authorised by client—Scope of authority of* Although a pleader has no power to compromise a suit unless he is specially authorised in that behalf, he can bind his client by an

PLEADER—*concld*

... question of fact provided that ... the suit in ... v *Ramlal, I L R 21 Mad 214,* followed ... *Sreenath, 9 W R 485, Rajunder* v *Bijai Govind, 2 Moo I A 253, Hinga Lal* v *Mansa Ram, I L R 18 All 384, Venkata Nara Simha* v *Bhasaya Karlu, I L R 22 Mad 538, Nando Lal* v *Nistarani, I L R 27 Calc 428 Swinfu* v *Chelmsford, 1 F & F 619, 27 L J Ex 382,* referred to DIGBIJOY RAY v SHAIKH ATA RAHAMAN (1911)
17 C W N 156

PLEADER S FEES

See BOMBAY REGULATION II OF 1827 s 52 I L R 37 Bom 303

PLEADERSHIP EXAMINATION

——— *Pleadership Examination—Candidate—Examiners—Specific Relief Act (I of 1877), ss 45, 46— Mandamus—Discretion* In making an application under s 45 of the Specific Relief Act, the provisions of s 46 must be strictly observed and in dealing with such an application the principles applicable to a writ of *mandamus* should generally be followed *Bank of Bombay* v *Suleman Somji I L R 32 Bom 466,* referred to PROVAS CHANDRA ROY, *In the matter of* 1913) I L R 40 Calc 588

PLEADING

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 52
I L R 37 Bom 427

PLEADINGS.

See HINDU LAW—WIDOW
I L R 35 All. 326

1 ——— *Quære* Whether a defendant who puts the plaintiffs to proof of a family usage alleged by them is precluded at a later stage from saying that he will not insist on the proof of usage but will accept the plaintiff s case on the point. HAZARI MALL BABU *v* ABANI NATH ADHURJYA (1912) 17 C W N 280

2 ——— *Plaint amendment of when should be allowed* Amendment of a plaint for a ... only where the claim has ... vertence or ... ately BHUK ... (1912) ...

3 ——— *Change of case—Issues—Suit to set aside a deed of gift as fraudulent, failing, claim for accounts of a share as from agent* Where on the eve of a contemplated pilgrimage to Mecca *M* transferred her property to her nephew *E* by a deed of gift, and on the same date the latter executed a deed which provided that a fourth share of the properties thus conveyed should remain in her possession during her life time and on her death should come into *E's* possession *Held,* that the fact that in a suit

PLEADINGS—*contd.*

to set aside the deed of gift on the ground of fraud and misrepresentation which failed, a general issue as to whether *E* was liable to render an account to *M* was raised with reference to the whole property, would not justify the Court in passing a decree directing *E* to account for the profits of a 4 as. share, on the footing of his being *M's* agent in respect of that share. MAHMUDA KHATUN CHOWDHURANI *v.* MOHAMED ELAHADAD KHAN PANI (1912) . . . 17 C. W. N. 427

PLEDGE.

See BAILMENT . I. L. R. 37 Bom. 122

POLICE ACT (V OF 1861 AS AMENDED BY ACT VIII OF 1895).

———— s. 15, cl. (4)—

See PUNITIVE POLICE.
I. L. R. 40 Calc. 452

POLICE REGULATIONS.

See PROCESSION
I. L. R. 40 Calc. 470

POLICE REPORT.

See COGNIZANCE.
I. L. R. 40 Calc. 854

POLICY.

See TRANSFER OF PROPERTY ACT (IV OF 1882 AS AMENDED BY ACT II OF 1900), s. 130.
I. L. R. 37 Bom. 198

POLITICAL RESIDENT AT ADEN.

See DIVORCE ACT (IV OF 1869), s. 3 (2)
I. L. R. 37 Bom. 57

POSSESSION.

See PETROLEUM.
I. L. R. 40 Calc. 356

———— suit for—

See MESNE PROFITS.
I. L. R. 40 Calc. 56

POSSESSORY RIGHT.

———— protection of, as against trespassers—

See TREE-PATTA.
I. L. R. 36 Mad. 148

POWER OF ATTORNEY.

———— construction of—

See LETTERS OF ADMINISTRATION.
I. L. R. 40 Calc. 74

PRACTICE.

See ASSESSORS, EXAMINATION OF.
I. L. R. 40 Calc. 163

See ATTACHMENT.
I. L. R. 40 Calc. 105

See ATTORNEY AND CLIENT.
I. L. R. 40 Calc. 386

PRACTICE—*contd.*

See BOMBAY REGULATION II OF 1827, s. 52 . . I. L. R. 37 Bom. 303

See BOOK OF REFERENCE.
I. L. R. 40 Calc. 898

See CHARGE . I. L. R. 40 Calc. 168

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 97.
I. L. R. 37 Bom. 480

See COGNIZANCE.
I. L. R. 40 Calc. 854

See COMPLAINT, DISMISSAL OF.
I. L. R. 40 Calc. 407

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), ss. 248, 258, 345.
I. L. R. 37 Bom. 369

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 337, CL. (3).
I. L. R. 37 Bom. 146

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), ss. 397, 123.
I. L. R. 37 Bom. 178

See CRIMINAL REVISION.
I. L. R. 40 Calc. 41

See INTERROGATORIES.
I. L. R. 37 Bom. 347

See JURISDICTION I. L. R. 35 All. 63

See JURISDICTION OF CRIMINAL COURT—FRESH PROCEEDINGS.
I. L. R. 40 Calc. 71

See LETTERS OF ADMINISTRATION.
I. L. R. 40 Calc. 74

See LIMITATION ACT (XV OF 1877), s. 19, SCH. II, ART. 148.
I. L. R. 35 Calc. 272

See MAHOMEDAN LAW—WAKF.
I. L. R. 35 All. 68

See REFUND OF COURT-FEE.
I. L. R. 40 Calc. 365

See SANCTION FOR PROSECUTION.
I. L. R. 40 Calc. 423

See TRANSFER OF APPEAL.
I. L. R. 40 Calc. 259

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 52.
I. L. R. 37 Bom. 427

1. ———————— *Appellate Court, duty of—Defective judgment—Omission to consider the defence evidence in a bad livelihood case—Criminal Procedure Code (Act V of 1898), ss. 110, 118, 367 and 424.* It is the duty of the Appellate Court, on an appeal from an order under ss. 110 and 118 of the Criminal Procedure Code, to look into the evidence for the defence, and after dealing with it to come to a decision thereon, notwithstanding that the counsel for the appellant has practically ignored it during his arguments. FIDOI HOSSAIN *v.* EMPEROR (1912)
I. L. R. 40 Calc. 376

PRACTICE—*concld.*

2. ———————— *Criminal Proceedings—Special Leave to Appeal—Limit of jurisdiction* Leave to appeal from convictions and sentences on the grounds of alleged irregular conduct of the proceedings, misdirection to the Jury, and misreception of evidence refused, the case not coming within the principle as laid down in *In re Dillet, 12 App Cas, 459* CLIFFORD *v* KING EMPEROR (1913) . **I. R. 40 I. A 241**

3 ———————— *Question of jurisdiction arising before Magistrate must be decided by himself—Magistrate cannot invite District Magistrate's opinion* While a Magistrate was trying a case, a question arose whether the accused was amenable to his jurisdiction The Magistrate [illegible]

to the Magistrate to seek the opinion of the District Magistrate in the way he did, but that he should finish the inquiry and complete the record by the reception of all evidence of relevant facts including the facts which bear upon the question of the accused's amenability to a British Court's jurisdiction, and then consider for himself the question of law arising on those facts EMPEROR *v* ABDUL RAHIMAN (1912) **I L R. 37 Bom. 144**

4. ———————— *Evidence—Defendant's right to offer evidence* Where the defendant appears and the plaintiff does not appear or offers no evidence when a suit is called on for hearing, the Court has no jurisdiction except to dismiss the suit for want of prosecution the defendant is not entitled to have his evidence heard before the suit is dismissed *Ex parte Jacobson, L R 22, Ch D 312*, distinguished KESRI CHAND *v* NATIONAL JUTE MILLS Co (1912) **I. L R. 40 Calc. 119**

PRE-EMPTION.

See CIVIL PROCEDURE CODE, 1908, ss 2, 104, 148 . **I. L. R 35 All. 582**

See CIVIL PROCEDURE CODE, 1908, O XXI, R 88 . **I. L R. 35 All. 286**

See HINDU LAW—JOINT FAMILY **I. L. R 35 All 564**

1. CUSTOM

———————— *Custom—Evidence—Sales to strangers unchallenged, as evidence negativing custom—Mode in which such sales should be proved* Where the Court is trying the issue of the existence or non existence of a custom of pre emption, every instance of a sale to a stranger is material evidence which the Court ought to take into consideration and weigh when coming

PRE EMPTION—*contd*

1 CUSTOM—*concld.*

to a conclusion on the issue But a mere vague statement that there had been sales to strangers without the production of the sale deeds or certified copies thereof, and without some further details of the sale, is not sufficient to prove sales to strangers *Sewak Singh* v *Girja Pande, 2 All L J 6*, discussed JANKI MISIR *v* RANNO SINGH, (1913) . **I L R 35 All. 472**

2 RIGHT OF PRE EMPTION

———————— *Subject matter of suit re sold at advanced price—Second sale subject to right of pre emption in respect of the first* A house in the city of Benares subject to a customary right of pre emption was sold for Rs 1,150 The vendee resold it shortly afterwards to the defendant for Rs 4,000 *Held*, on suit brought to pre empt the property at the original price of Rs 1,150, that the second sale was subject to the right of pre emption and the pre emptor was only bound to pre empt the first sale, making the subsequent vendee a party to the suit so as to bind him by the proceedings *Kamta Prasad* v *Mohan Bhagat, I L R 32 All 45*, referred to KHETTAR CHANDRA BASU MALLIK *v* NABIN KALI DEBI (1913) **I. L R. 35 All 385**

3 WAJIB UL ARZ

1. ———————— *Wajib ul arz—Partition of village into several mahals—Dastur dehi, relating to whole village—Suit by co sharer of one mahal against co sharer of another mahal on ground of nearness in relationship to vendor* The *dastur dehi* of a village divided into several mahals, but which nevertheless was held to be applicable to the whole village, and to represent an arrangement come to by the co sharers in the village amongst themselves, provided, as to pre emption, as follows — "If a co sharer wants to sell his share, he must sell first to near co sharers, then in the patti, then in the mahal, then in the village " *Held*, that the effect of this clause was to give to a co sharer in one mahal, who was a relation of the vendor, a preferential right of pre emption over a co sharer in another mahal who was not a relation YAD RAM *v* CHEDA LAL (1913) . . **I. L R. 35 All 478**

2. ———————— *Wajib ul arz—Co sharer in patti and co sharers in mahal—Fictitious conveyance of share in patti to latter—Alleged previous offer to plaintiff—Witnesses found to have deposed falsely as to part, if to be believed as to other parts—Party not coming forward to contradict positive evidence of opponent as to matters within his personal knowledge, if may succeed* Plaintiff being a co sharer in the *patti* sued for pre-emption, and the defendants who were only co sharers in the *thok* or *mahal* resisted his claim on the grounds, (i) that they had by a prior conveyance acquired a share in a *patti*, and (ii) that the plaintiff had refused the offer of the defendants'

PRESS ACT (I OF 1910)—*concld*

———— s 3—*concld*

23 (1) of the Act, for keeping the press without making the deposit He was convicted of the ... The applicant having applied to the

meaning that the depos ... within a reasonable time *Held*, also, that the interval which elapsed between the afternoon of the 28th September and the 3rd October *could not be reckoned as an unreasonable time* EMPEROR *v* FULCHAND BAPUJI (1913)
I L R 37 Bom 555

PRESUMPTION

See PUBLIC GAMBLING ACT (III OF 1867)
ss 3, 4 I L R 35 All 1

See STANDARD OF PROOF
I L R 40 Calc 898

PREVENTION OF CRUELTY TO ANIMALS ACT (XI OF 1890)

———— s 3—*Whether the offence must be committed within sight of any person—Preparation of* puri' *dye from cow s urine* Where it was found that the petitioner tortured his cows by depriving them of water and these cows were tied up where the sufferings of the animals could be witnessed by persons from the lane on which the house of the petitioner was situated *Held*, that the offence comes within the purview of s 3 of the Prevention of Cruelty to Animals Act (XI of 1890) MISRI GOPE *v* ABDUL LATIF (1912) 17 C W N 332

PREVENTION OF GAMBLING ACT (BOM IV OF 1887)

———— s 4, cls (*a*), (*c*)—*Place—Interpretation—A chok having houses on all sides and approached by a narrow lane* The accused were convicted under s 4 cls (*a*) and (*c*), of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887), for having the use of a place and keeping or using the same for the purpose of a common gaming house The spot in question was small open space surrounded by houses on all sides and accessible only by a narrow lane on which was a sign board pointing to the spot The accused No 1 was the lessee in occupation of the pot The question for determination was whether the spot in question was a place' within the meaning of s 4 of the Act *Held*, that the spot in question was a place within the meaning of s 4, inasmuch as it was a small area, limited by metes and bounds, surrounded on all sides by buildings, and appropriated for the business *of betting by the accused No 1 becoming the* lessee in occupation of it EMPEROR *v* FATTOO MAHOMED . I L R 37 Bom. 651

PRINCIPAL AND AGENT.

See ACCOUNT, SUIT FOR
I. L. R. 40 Calc. 108

PRINCIPAL AND AGENT—*contd*

1. ———— *Suit for declaration of title to the benefits of a decree—Maintainability of the suit* Where an agent entered into a conti and of a su agai decre, before the suit was brought by his agent, might have adopted the contract made by the latter, and sued on it, but if he did so he was bound to adopt the contract *cum onere* *Udell* v *Atherton*, 7 H & N 172 and *Bristow* v *Whitmore*, *9 H I C 391*, approved He might also have intervened at any stage in the action which had been commenced by his agent *Sadler* v *Leigh*, *4 Camp 195*, approved GODHANRAM *v* JAHAR MULL PUGLIA (1912) I. L. R. 40 Calc 335

2 ———— *Agent s death—Liability of legal representatives to render accounts—Liability of agent's assets—Remedy of principal—Suit for damages—Onus—Limitation—Limitation Act (IX of 1908) Sch I Arts 89, 115 120* The legal representatives of an agent cannot be called upon to render accounts to the principal in the same sense as the agent himself as they cannot be required to explain matters of which they have no personal knowledge and to assist the principal in the investigation of the management of his estate of which they are ignorant The estate of the agent however continues to be liable and the remedy of the principal is to sue the representatives for any loss he may have suffered by reason ... misfeasance or ... axim *actio per* ... be no bar to an action where the act complained of was not a mere tort but was a breach of a *quasi* contract, where the claim was founded on a breach of a fiduciary *relation or on failure to perform a duty* *Conchr* v *Murrieta 40 Ch D 543* *Philips* v *Homfray 24 Ch D 439* relied on A claim by the principal against the legal representatives of the

strictly so called but for money payable to the principal by the representatives of the agent out of the assets in their hands *Manmothonath Bose* v *Basonto Kumer Bose I L R 22 All 332*, relied on In such a suit, the burden will be on the plaintiff to prove his case Such a suit is not governed by Art 89 of the Limitation Act, but by either Art 115 or Art 120 *Lawless* v *Calcutta L & S Co, I L R 7 Calc. 627*, *Harender* v *Administrator General, I L R 12 Calc 357*, *Bindraban* v *Jamuna, I L R 25 All 5*, referred to KUMEDA CHARAN BALA *v* ASUTOSH CHATTOPADHAYA (1912) 17 C W. N. 5

3 ———— *Death of agent—Suit for accounts if lies or may be continued against heirs* A suit for accounts brought against an

PRINCIPAL AND AGENT—*concld.*]

agent may be continued, on his death pending suit, against his legal representatives. *Semble*: A suit for accounts lies against the heirs of a deceased agent. *Manmatha Nath Bose Mullick* v. *Bosanta Kumer Bose Mullick, I. L. R. 22 All. 332*, doubted. *Kumeda Charan* v. *Ashutosh, 16 C. L. J. 282*, referred to. BAHADUR SINGH *v.* BASUNTA KUMAR ROY (1913) . . **17 C. W. N. 695**

PRINTING PRESS.

See PRESS ACT (I OF 1910), s. 3.
I. L. R. 37 Bom. 555

PRIOR AND SUBSEQUENT INCUMBRANCES.

See CIVIL PROCEDURE CODE, 1908, s. 11.
I. L. R. 35 All. 111

PRIORITY.

See REGISTRATION ACT (XVI OF 1908) s. 50 **I. L. R. 35 All. 271**

PRIVATE INTERNATIONAL LAW.

———— *Jurisdiction—Power of Foreign Court to sell debt which has arisen in British India—lex loci rei sitae.* Where a pledge of movable property or of a debt is allowed by the law of the territory where the transaction took place, the Court of that territory has jurisdiction to sell the property in execution of its decree so as to pass a valid title to it, even if the property is situate outside of its jurisdiction. *Ghaneshamlal* v. *Bhansali, I. L. R. 5 Bom. 249*, distinguished. D'COUTHA *v.* ASSAN KUNHU (1913)
I. L. R. 36 Mad. 1

PRIVATE KNOWLEDGE.

———— of facts by Judge—

See EVIDENCE . **I. L. R. 36 Mad. 168**

PRIVILEGE.

See DEFAMATION—STATEMENT BY ACCUSED . **I. L. R. 40 Calc. 433**

See LIMITATION.
I. L. R. 40 Calc. 898

PRIVILEGE AGAINST COURT.

See INSTRUCTIONS TO COUNSEL.
I. L. R. 40 Calc. 898

PRIVILEGE OF COUNSEL.

See LIMITATION.
I. L. R. 40 Calc. 898

PRIVY COUNCIL.

See LAND ACQUISITION ACT (I OF 1894), s. 54 . . **I. L. R. 37 Bom. 506**

See APPEAL TO PRIVY COUNCIL.

See PRIVY COUNCIL, PRACTICE OF.

1. ———— *Privy Council—Appeal, new case on—Practice.* The hearing of the appeal being *ex parte*, the Judicial Committee refused to depart from the established practice of not allowing the appellant to make a new case based on grounds which were not urged in the Courts in India, were not specified in the petition to the High Court for leave to appeal, and were not suggested in the reasons contained in the case for the appellant. SONI RAM *v.* KANHAIYA LAL (1913) . . . . . **17 C. W. N. 605**
I. L. R. 35 All. 227

2. ———— *Decision, inconsistent—Binding character.* The fact of a decision of the Judicial Committee being consistent with an earlier one, cannot affect its binding character and the High Court is bound to follow it. MADHU SUDAN MONDAL *v.* RADHIKA PRASANNO DAS. (1912) **17 C. W. N. 873**

PRIVY COUNCIL, PRACTICE OF.

See ADOPTION . **I. L. R. 40 Calc. 879**

See LIMITATION ACT (XV OF 1877), s. 19, SCH. II, ART. 148.
I. L. R. 35 All. 227

———— *Appeal in criminal case—Case where some substantial and grave injustice has been done—Conviction on partly inadmissible, and unreliable evidence—principles governing interference with verdict of Criminal Court in India—Costs where appeal of accused person succeeds.* Special leave to appeal in a criminal case may be granted where "by some disregard of the forms of legal process, or by some violation of the principles of natural justice, or otherwise, some substantial and grave injustice has been done." *In re Dillet, L. R. 12 A. C. 459, per* Lord Watson, followed. In this case in which the appellant had been tried with others and convicted of abetment of murder, and sentenced to death, their Lordships, in allowing the appeal, were of opinion that injustice of the kind above mentioned had been done, inasmuch as a vast body of inadmissible evidence, hearsay and other, had been admitted; that when admitted it had been used to the grave prejudice of the appellant; and that at the end of the hearing before the Judge of first instance there did not exist any reliable evidence upon which a capital conviction could be safely or justly based. *Held*, that under these circumstances whatever doubts their Lordships might have of the appellant's innocence, or whatever suspicions they might entertain of his guilt, or however great might be their reluctance to interfere with or overrule the decisions of the Indian Courts in Criminal matters, the conviction should not be allowed to stand. *Held*, also, that this case was not one of disturbing the verdict of the Judge of a Criminal Court in India who having seen and heard the witnesses had believed them and founded his decision on their testimony; it was the reverse of that, because in this case the Judge who saw and heard the witness upon whose evidence the conviction was mainly based, did not think his evidence so reliable that he could act upon it alone and had, therefore, ordered the discharge of the other accused implicated by it. Costs of a successful appeal were not allowed as against the

PRIVY COUNCIL, PRACTICE OF—*concld*

Crown *Johnson* v *Rex*, [*1904*] *A C 817, 824*, followed VAITHINATHA PILLAI *v* KING EMPEROR (1913) . . . I L R. 36 Mad. 501

PROBATE.

See HINDU LAW—STRIDHAN
I. L. R. 40 Calc. 82

See LIMITATION ACT (IX OF 1908) SCH I, ART 95 I L R. 37 Bom 158

See SUCCESSION ACT (X OF 1865), s 244
I L R. 35 All. 448

——— *Caveat, if may be entered by widow of a predeceased son—Maintenance of widow of predeceased son, if may be affected by probate proceedings—Obligation of the heir—Sufficient interest* The widow of a predeceased son of the testator has in fact no interest sufficient to enable her to appear on probate proceedings Her right to maintenance will not be

.

22 *Mad 305*, followed *Seddeshury Dassi* v *Janardan Sarkar, I L R 29 Calc 557, 6 C W N 530*, referred to *In the goods of* GOBINDA CHANDRA BABAJEE (1913) 17 C. W. N 1141

PROBATE AND ADMINISTRATION ACT (V OF 1881).

——— s. 23— *Grant of Letters of Administration —Title to property if Court would go into, in granting administration—Practice* It is not the practice of the Court in its Testamentary and Intestate jurisdiction to go into questions of title in a application for the grant of letters of administration The Court would not frame issues or go into evidence to decide as to who is entitled to the property Letters of administration were ordered to be issued to the husband in respect of his deceased wife s estate upon furnishing security upon allegation in the husband s petition that part of such estate was *jautuka stridhan*, although it was denied by his wife's brother who entered caveat, but did not apply for letters of administration himself *In the goods of Raghubar Ha.am, 3 C W N cclxxvii, Raghunath Misser* v *Musst Pate Koer, 6 C W N 315*, and *Ochavaram* v *Dolatram, I L R 28 Bom 644*, relied on NISHI KANTA CHATTERJEE *v* ASHUTOSH MUKERJEE *(1912)* . *17 C. W. N. 613*

——— s. 50, Expl. (4).

See LETTERS OF ADMINISTRATION
I L. R 40 Calc. 50

——— s 98—

See ADMINISTRATION
L. R. 40 I. A 236

PROCEDURE

See CIVIL PROCEDURE CODE 1908, s. 47 . . I. L. R. 35 All. 243

PROCEDURE—*concld*

See CIVIL PROCEDURE CODE, 1908, s 92 (*1*) . I. L. R. 35 All. 98

See CIVIL PROCEDURE CODE, 1908, O V, RR 1 AND 2 , O IX, R 13
I L R 35 All. 163

See CIVIL PROCEDURE CODE, 1908, O. IX, R 8 . . I. L. R 35 All. 105

See CIVIL PROCEDURE CODE 1908, O IX, RR 8 AND 9 , O XXII, RR 3, 9
I L R. 35 All. 331

See CRIMINAL PROCEDURE CODE, s 125
I. L R. 35 All. 103

See EXECUTION OF DECREE
I L. R 35 All. 119

See REGISTRATION ACT (XVI OF 1908) ss 31, 32, 52, 87 I. L. R. 35 All. 34

See UNITED PROVINCES MUNICIPAL ACT (I OF 1900), s 187
I. L R 35 All. 450

See WORKMEN S BREACH OF CONTRACT (XIII OF 1859) I L R. 35 All. 61

PROCESSION

——— *Commissioner of Police —Orders prohibiting a public procession and a particular individual from joining it—Legality of such orders—Public notice of order, necessity of—Power of Indian Legislature to make police regulations regarding public processions—Calcutta Police Act (Beng IV of 1866), ss 62A (4) 102A—Calcutta Suburban Police Act (Beng II of 1866), ss 39A (4), 49A—Calcutta and Suburban Police (Amendment) Act (Beng III of 1910), ss 16 and 31* Sub s (4) of s 62A of the Calcutta Police Act and of s 39A of the Suburban Police Act must be strictly construed It empowers the Commissioner of Police, when he considers it necessary to do so for the preservation of the public peace or public safety, to prohibit a procession or public assembly but not a particu

Suburban Police Acts *Semble* Indian Legislature is competent to make police regulations of the kind in the interests of public peace and safety LEAKAT HOSSAIN *v* EMPEROR (1913)
I L. R 40 Calc 470

PROCLAMATION OF SALE.

See HIGH COURT, BOMBAY, CIVIL CIRCULAR 96, CL (*l*)
I L R. 37 Bom. 631

——— irregularities in—

See APPEAL TO PRIVY COUNCIL
I. L. R. 40 Calc 635

PROFESSIONAL CONDUCT.

See BAR COUNCIL, RESOLUTIONS OF.
I. L R 40 Calc. 898

PROFESSIONAL CONDUCT OF COUNSEL.

See LIMITATION I. L. R. 40 Calc. 898

PROFESSIONAL ETIQUETTE.

See COUNSEL, PROFESSIONAL CONDUCT OF . . I. L. R. 40 Calc. 898

PROMISSORY-NOTE.

——— *Acknowledgment—Deed, construction of—Unconditional undertaking and the document styled as promissory-note.* It is no doubt true that the question whether an instrument is a promissory-note or not should be judged by the words used, and the instrument must contain in words an unconditional undertaking to pay a sum of money, and it is not enough that the substantial effect of the instrument should be to make the executant liable to pay a sum of money. *Held,* that the following document wherein the executant not only made an unconditional undertaking to pay but also styled it a promissory-note was a promissory-note and not a mere recital of a liability, and as such was not admissible in evidence for want of a proper stamp: "Promissory-note executed on . . . in favour of . . . by . . . In the matter of the purchase of piece-goods by me from your shop on this date, the sum found due by me as per *patty* (list) is Rs. 600 . . . which sum I promise to you or to your order on demand with interest at 1¼ per cent. To this effect . . ." *Tirupathi Goundan* v. *Rama Reddi, I. L.R. 21 Mad. 49, Govind* v. *Balvant Rao, I. L.R. 22 Bom. 986, Horne* v. *Redfearn, 4 Bing. N. C. 433,* and *White* v. *North, 3 Exch. 689,* distinguished. *Morris* v. *Lee, 92 E. R. 409,* referred to. KARUTHAPPA ROWTHAN *v.* BAVA MOIDEEN SAHIB (1913) I. L. R. 36 Mad. 370

PROOF.

——— standard of—

See LIMITATION. I. L. R. 40 Calc. 898

——— *Penal Code (Act XLV of 1860), s. 147, s. 304 read with s. 149—Prosecution evidence mostly disbelieved—Hypothetical case made by the Court—Propriety of conviction.* Where the Sessions Judge discarded almost in their entirety the accounts of the occurrence given by the witnesses for the prosecution and substituted a narrative of his own, founded for the most part on surmise and conjecture, and the story of the origin of the occurrence and the course of events as reconstructed by the Sessions Judge were wholly inconsistent with the story told by the witnesses, and the appellants were convicted under s. 147 and s. 304 read with s. 149, Penal Code: *Held,* that the conviction should be set aside. KALU KHALASHI *v.* THE KING-EMPEROR (1912) . . . . . 17 C. W. N. 538

PROPRIETARY TITLE.

See AGRA TENANCY ACT (II OF 1901) ss. 58, 200 I. L. R. 35 All. 157

PROSECUTION.

See COLLECTOR I. L. R. 40 Calc. 465

——— order for—

See JURISDICTION OF CRIMINAL COURT I. L. R. 40 Calc. 360

——— withdrawing from—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), ss. 248, 253, 345. I. L. R. 37 Bom. 376

PROSTITUTE'S PROPERTY.

See HINDU LAW—STRIDHAN. I. L. R. 40 Calc. 650

PROVIDENT INSURANCE SOCIETIES ACT (V OF 1912).

——— ss. 5, 6—

See TRADE-NAME. I. L. R. 40 Calc. 570

PROVIDENT INSURANCE SOCIETY.

See TRADE-NAME. I. L. R. 40 Calc. 570

PROVINCIAL INSOLVENCY ACT (III OF 1907).

——— ss. 2 (*1*) (*g*), 18, 20 (*c*), 40 (*1*), 44, 47—

See RECEIVER I. L. R. 40 Calc. 678

——— ss. 4 to 6, 11 to 16, 26, 43, 44 and 47—*What matters are necessary to be enquired into before adjudication—What are proper subjects of enquiry before deciding on final discharge.* Before passing an order of adjudication under the Provincial Insolvency Act, it is not for a Court to decide whether the debts stated in the petition for insolvency are real, whether the petitioner has not concealed any property of his from his lists of assets or whether he is unable to pay his debts and similar questions. All these are properly subjects that ought to be enquired into before giving a discharge. The only things that are necessary to be decided before adjudication, are whether the creditor or debtor is entitled to present the petition, whether the required notices have been served and whether the debtor has committed the alleged act of insolvency. *Per* CURIAM: S. 14 (*2*) provides that "the Court shall also examine the debtor if he is present, as to his conduct, dealings, and property in the presence of such creditors as appear at the hearing, and the creditors have the right to question the debtor thereon." There is no doubt that both these clauses require that the acts referred to therein should be done. But it does not follow that every matter, which forms the subject of the examination of the debtor, should be decided before an order of adjudication is made. The scheme of Act III of 1907 is to make an order of adjudication at first and then to make a full enquiry into all matters connected with the insolvency before the final discharge is decided. The

PROVINCIAL INSOLVENCY ACT (III OF 1907)—*concld*

——— s 4—*concld*

Court has power to refuse to make an order not only on non compliance *of matters stated in s* 14 (*1*) but also on other grounds (*e g*) preven tion of abuse of process of the Court unnecessary harassing of a debtor by the creditor *Per* SUNDARA AYYAR J—The object of the pro vision for examination in s 14 (*2*) is as in England to obtain information at as early a stage as possible of the property and the whole conduct of the debtor in their relations to the insolvency proceedings *Udai Chand Maiti* v *Ram Kumar Khara 15 C W N 213 Ghirwadhari* v *Jai Narain I L R 32 All 645* and *Nathu* v *The District Judge of Benares I L R 32 All 547* disapproved Various sections of the Act and of the English Bankruptcy Act considered JEER *v* RENGASAMI (1913) **I L R. 36 Mad. 402**

——— s 6 (2)—*Application by debtor—Residence within jurisdiction—Temporary residence* It is not necessary for a petitioner applying to be declared an insolvent to have resided for a long time at a place within the jurisdiction of the Court Even temporary residence for a time and for a particular purpose is enough to give the Court jurisdiction to deal with an application for insolvency *Ex parte Hecquard 24 Q B D 71* followed ABDUL REZAK *v* BASIRUDDIN AHMED (1911) **17 C W N 405**

——— s 15—*Application by debtor to be declared insolvent—Acts of bad faith, if ground for rejecting petition* An application by a debtor to be declared an insolvent cannot be rejected on the ground of his having committed acts of bad faith *Uday Chand Maiti* v *Ram Kumer 15 C W N 213 12 C L J 400* and *Samiruddin* v *Kadumoyi 15 C W N 241 12 C L J 445* followed ABDUL REZAK *v* BASIRUDDIN AHMED (1911) **17 C W N 405**

——— ss 22, 46, 52—*Limitation Act (IX of 1908) s 5—Insolvency—Application to Court to reverse act of receiver—Limitation* *Held* that s 5 of the Indian Limitation Act 1908 does not apply to applications contemplated by s 22 of the Provincial Insolvency Act 1907 *Dropadi* v *Hira Lal I L R 34 All 496* distinguished THAKUR PRASAD *v* PANNO LAL (1913) **I L R 35 All. 410**

——— ss 46, 47—

See APPEAL TO PRIVY COUNCIL
I. L. R. 40 Calc 685

——— s 50—

See INSOLVENCY **I L R 40 Calc 78**

PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887)

——— ss 15, 33—*Suit to recover a sum of money as the value of trees felled by the defendant—Ownership of the trees in the plaintiff because the land on which they stood belonged to him—Incidental issue as to title to immoveable property—Jurisdiction of the Small Causes Court* The plaintiff brought a suit in the Court of Small Causes to recover Rs 12 as the value of certain trees felled by the defendant The plaintiff s claim to relief proceeded on the basis that the trees belonged to him because the land on which they stood also belonged to him A question having arisen as to the jurisdiction of the Court of Small Causes to entertain the suit *Held* by the Full Bench that a Court of Small Causes could entertain a suit the pr
mine a rig
the suit in
payment of a sum of money PUTTANGOWDA *v* NILKANTH KALO DESHPANDE (1913)
I L. R 37 Bom 675

——— Sch II Art 13—

See GENERAL CLAUSES ACT s 3 (25)
I L R 35 All. 158

——— *Land Cess—Suit by zamindar against inamdar for recovery of not a suit of small cause nature* A suit by a zamindar for the recovery of land cess from the inamdar is not a suit of a small cause nature within article 13 of the Provincial Small Cause Courts Act MAHARAJAH OF VIZIANAGRAM v VEERANNA (1913) **I L R. 36 Mad 18**

PUBLIC CONVEYANCES ACT (BOM VI OF 1863)

——— s 1—*Public conveyance—Hand drawn lorry is a public conveyance* A hand drawn lorry plied for the conveyance of goods is a public conveyance within the meaning of the expression as defined in the Public Conveyances Act (Bombay Act VI of 1863) EMPEROR *v* BANUBHAI HADUBHAI (1912) **I L R 37 Bom. 374**

PUBLIC GAMBLING ACT (III OF 1867)

——— ss 3, 4—*Presumption—Warrant not in accordance with provisions of Act* *Held* that a warrant authorising the search of any house which the police officer to whom it has issued might think proper to search, was not a legal warrant within the provisions of the Public Gambling Act 1867 EMPEROR v HARGOBIND (1912)
I L R. 35 All. 1

PUBLIC OFFICER

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 80 **I L R. 37 Bom 243**

PUBLIC POLICY

See CONTRACT ACT (IX OF 1872) s 25 ***I L. R. 37 Bom 280***

See TRADE MARK
I L R 40 Calc 814

PUNITIVE POLICE

——— *Costs apportionment of—Police Act (V of 1861 as amended by Act VIII*

PUNITIVE POLICE—*concld.*

of 1895), ss. 15, cl. (4), 16—District Magistrate, duty of—Amount realized on apportionment made by a Deputy Magistrate, effect of—Secretary of State for India, suit against, if maintainable. An apportionment of costs made by a Deputy Magistrate under s. 15, cl. (4) of the Police Act, for maintenance of a police force, is illegal. Where, therefore, an apportionment of costs having been made by a Deputy Magistrate, and which on appeal having been affirmed by the District Magistrate, the amount of costs assessed was recovered from a person, under s. 16 of the Act, by distress warrant : *Held,* that the amount not being legally realized, a suit for the recovery thereof would lie against the Secretary of State for India in Council. *Sivabhajan* v. *The Secretary of State for India, I. L. R. 28 Bom. 314,* referred to. KAILASH CHANDRA NAG *v.* SECRETARY OF STATE FOR INDIA (1912) **I. L. R. 40 Calc. 452**

PURCHASE MONEY.

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 97, 62. **I. L. R. 37 Bom. 538**

——— **payment of—**

See PRE-EMPTION. **I. L. R. 35 All. 582**

PURCHASER.

——— **liability of—**

See SALE FOR ARREARS OF REVENUE. **I. L. R. 40 Calc. 89**

——— **rights of—**

See SALE FOR ARREARS OF REVENUE. **I. L. R. 40 Calc. 89**

PURDANASHIN LADY.

——— **liability of—**

See MORTGAGE **I. L. R. 40 Calc. 378**

——— *Deed of trust executed by—Independent advice, absence of, if invalidates deed—Free agent, intelligent apprehension, nature of transaction—Bengali deed containing English words not explained.* The Courts should be careful to see that deeds taken from *purdah* woman have been fairly taken, that the party executing them has been a free agent and duly informed as to what she was about. It cannot be accepted as a formula conclusive of every case of a deed taken from a *purdah* woman that the absence of advice vitiates the transaction. Advice is not in itself essential; it is merely a means to secure that which is essential, an intelligent apprehension of the transaction. The first and practically perhaps the most important question is, was the transaction a righteous transaction, *i. e.,* was it a thing which a right-minded person might be expected to do ? *Mohomed Buksh Khan* v. *Hasseini Bibi, L. R. 15 I. A. 81, 92,* followed. Where an illiterate *purdahnashin* woman transferred her property to her brother and his family by a deed of trust and there was evidence that the idea had originated with her, that the draft was prepared according to her instructions and that the deed which was in her vernacular was read over to her and she admitted execution before the Registrar, the fact that there was no evidence as to what advice she had had in the matter was not in itself sufficient to invalidate the deed. Where the said vernacular deed contained some English words such as "trust" "committee" "revocable," and there was no evidence that those words were explained to her : *Held,* that though it is an infirmity in the case of those claiming under the instrument, it is not destructive of their claim under the instrument. KESHUB LALL PYNE *v.* RADHA RAMAN NUNDY (1912) . . **17 C. W. N. 991**

PUTNI REGULATION (VIII OF 1819.)

——— *Position of a purchaser at sale under—Previous suit for rent by original talukdar dismissed on the ground that relation of landlord and tenant did not exist—Subsequent suit by purchaser, if barred by res judicata—Purchaser if bound to annul incumbrance before suit—"Incumbrance," adverse possession when—Limitation.* Although the position of a purchaser at a sale under Reg. VIII of 1819 may not be precisely that of a purchaser at a sale for arrears of revenue yet he is not privy in estate to the defaulting proprietor and he does not derive his title from him, as under s. 11 of the Regulation he has acquired the property free of all incumbrances that might have been created upon it by the act of the defaulter, his representatives or assignees and consequently a claim for rent by such a purchaser is not barred by *res judicata* by reason of the failure of a suit for rent by a previous putnidar, on the ground that the relationship of landlord and tenant between the then plaintiff and the defendants was not established. *Tara Prosad* v. *Ram Nirisingha Singh, 14 W. R. 283,* and *Radha Gobind* v. *Rakhal Das, I. L. R. 12 Calc. 82, 90,* relied on. A purchaser at a sale under Reg. VIII of 1819 need not take any steps before the suit is brought to annul an incumbrance. The interest of an adverse possessor is an incumbrance only when the adverse possession has continued for the statutory period. Adverse possession is arrested by the sale, and limitation runs as against the purchaser from the date when the sale becomes final. SATISH CHANDRA SINHA *v.* MUNJAMATI DEBI (1912) . . . . . **17 C. W. N. 340**

——— **ss. 3, 11, 15**—*Sale of putni—Durputnidar's interest, if ipso facto cancelled—Possession taken and proclamation obtained, effect of.* The purchaser at a *putni* sale under the provisions of Reg. VIII of 1819 acquires the right to take possession immediately, and one who has a tenure or a middle interest between the resident cultivator and the late *putnidar* cannot bar or in any way prejudice the purchaser's right. *Mahini Chander Muzamder* v. *Jotirmoy Ghose, 4 C. L. R. 422, Watson* v. *Collector of Rajshahi, 13 Moo. I. A. 160, Brindaban Chunder Sircar Chowdhury* v. *Brindabun Chunder Day Chowdhury, L. R. 1 I. A. 178,* followed. *Madhu Sudhan Kundu* v. *Ramdhun*

PUTNI REGULATION (VIII OF 1819)— *concld*

——— s 3—*concld*

Ganguly, 12 W R 383, 3 B L R 431, distinguished When the purchaser asserted her full right as such at the earliest possible occasion, took possession and obtained a proclamation as required by s 15 of the Regulation and then instituted a suit for rent against the cultivating tenant *Held,* that she was entitled to a decree the interest of a *dur putnidar* who resisted the claim being considered as cancelled KRISHNA PROMODA DASSI *v* DWARKA NATH SEN (1913)

17 C W N 1092

Q

QABULIAT

See LANDLORD AND TENANT

I L R 35 All 505

See KABULIYAT

R

RAILWAY

See RAILWAYS ACT (IX OF 1890), s 101

I L R 37 Bom 685

——— *Liability of Railway Companies for damage to goods entrusted to them for Act of of my*

for negligence in preventing damage from fire after discovery of the fire On the 3rd of March 1909 the 2nd plaintiffs consigned 90 bales of cotton to the defendants at Malkapur for delivery to the

at 3 40 P M, the said bales of cotton were found to be on fire The waggon containing them was immediately detached and placed on a siding, the doors were opened, 37 bales were extracted and the engine driver having unsuccessfully tried to put out the fire with water from his boiler, took

pletely consumed While the bales were being burnt communications passed between the Varangaum and Bhusaval Station Masters as to the sending from Bhusaval of appliances to put out the fire At 4 10, the Station Master at Varangaum telegraphed to the Station Master at Bhusaval to send a fire pipe to put out the fire as it was burning very badly This message was

RAILWAY—*contd.*

received at Bhusaval at 4 30 P M During the day the Station Master at Varangaum sent several practice messages asking for assistance from Bhusaval and also sent a further telegram which was received at Bhusaval about 8 30 P M – Fire pump not sent yet half the bales burnt, strong wind blowing fire in great force, arrange sharp The Station Master at Bhusaval did not send any assistance whatever He made inquiries as to how far water was from the fire and on receiving the information that the nearest water was in a well some 200 yards from the fire and some 25 feet from the surface, came to the conclusion that the appliances at Bhusaval Station would be ineffective In fact the nearest well was some 200 yards from the fire but only some 53 feet from the nearest point on a siding to which the waggon containing the bales could have been brought After the fire the defendants notified the plaintiffs that the 90 bales had been burnt, but afterwards offered to give delivery to the plaintiffs of 37 bales, slightly damaged but the plaintiffs refused to accept delivery of the bales and subsequently they were sold by the defendants for the sum of Rs 3 210 The plaintiffs sued the defendants to recover the value of the 90 bales No cause of the fire could be shown and no definite act of negligence on the part of the servants of the defendants or other default on their part prior to the discovery of the fire was proved *Held,* that the responsibility of the defendants for the loss destruction or deterioration of goods delivered to them to be carried by them was as provided by s 72 of the Railways Act IX of 1890, that of a bailee under ss 151 152 and 162 of the Contract Act, and that s 76 of the Railways Act did not extend the principles contained in s 9 of the Carriers Act 1865, to suits against Railway Companies and did not increase the onus of proof laid on the defendants under s 151 of the Contract Act, namely, to take as much care of the goods bailed to them as a man of ordinary prudence would under similar circumstances take of his own goods of the same bulk, quality, and value as the thing bailed, but that in the absence of special contract the defendants were not responsible for the loss, destruction and deterioration of the goods if they had taken that amount of care *Held* further, that the defendants had exonerated themselves *quo ad* the outbreak of the fire *Held,* however, that the obligation on the defendants included not only the duty of taking all reasonable precautions to obviate risks, but the duty of taking all proper measures for the protection of the goods when such risks had actually occurred and that the defendants servants had been guilty of default, the Station Master at Bhusaval in not having sent appliances to extinguish the fire when requested by the Station Master at Varangaum, and the Station Master at Varangaum in having misled the Station Master at Bhusaval as to the distance of water from the fire, and that the defendants had not taken the care a reasonable man would take to save his goods *Held,* accordingly, that the defendants were liable to the plaintiffs

RAILWAY—*concld.*

to the extent of the damage which they might have prevented on the discovery of the fire. LAKHICHAND RAMCHAND *v.* G. I. P. RAILWAY COMPANY (1911) . . **I. L. R. 37 Bom. 1**

RAILWAY PREMISES.

——— right to enter upon—

See PENAL CODE (ACT XLV OF 1860), s. 188 . . **I. L. R. 35 All. 136**

RAILWAY RECEIPT.

——— production of—

See DISHONESTLY RECEIVING STOLEN PROPERTY . **I. L. R. 40 Calc. 990**

RAILWAYS ACT (IX of 1890).

——— s. 72 (2) (*b*)—*Risk-note, Form B—Shortage in contents of consignments, suit for damages for, if lies—Exception in regard to loss of whole consignment or package, if applies.* Where several tins of *ghee* consigned for carriage by the defendant Railway Company upon special terms as to rates and liability contained in a risk-note, Form B, were found on arrival to have been cut open and there was a shortage in their contents : *Held*, that the loss was covered by the risk-note and the Company was not liable—the exception with regard to loss of a whole consignment or one or more packages out of a consignment not being applicable to the present case where all the packages arrived but with a deficiency in the contents of some of them. EAST INDIAN RY. CO. *v.* SHIV PROSAD BHAKAT (1912). **17 C. W. N. 529**

——— ss. 77, 140—*Goods delivered in damaged condition—Notice of claim—Service on Traffic Manager, if sufficient—Suit for damages—Maintainability.* Serving a notice of claim in respect of goods delivered by a Railway Company in a damaged condition on the Divisional Traffic Manager of the Company is, in the absence of authority given by the Agent of the Company to the Divisional Traffic Manager, not a sufficient compliance with the provisions of s. 140 of the Railways Act. *Nadiar Chand Saha* v. *Wood, I. L. R. 25 Calc. 194*, followed. *Woods* v. *Meher Ali Bepari, 13 C. W. N. 24*, explained and distinguished. EAST INDIAN RAILWAY COMPANY *v.* MADHO LAL (1913) **17 C. W. N. 1134**

——— s. 101—*General Rules 99 (c), 100—Breach of the rules—Endangering the safety of persons—Disregard of the rules by the station master—Fouling the line for which line clear is given—Driver of the approaching train disregarding danger signals and rushing into the derailed waggon on the line—Liability of the station master.* The accused, a station master, received an up goods train on the third line in his station yard. He then ordered the driver of the goods train to detach his engine and shunt 9 waggons which was standing on the loop line to a dead end siding in order to make room for the down mail. At that time the next station on the other side asked the accused for line clear in order to pass an up

RAILWAYS ACT (IX OF 1890)—*concld.*

——— s. 101—*concld.*

passenger train, which the accused gave at once. The 9 waggons were shunted from the loop to the main line, and while they were being taken from the main line to the dead end siding, one of the waggons got derailed at the points where the siding joined the main line. At this time the distant and home danger signals were up against the up passenger train. Still the driver of that train disregarded both signals, and dashed into the derailed waggon, causing some injury to two of the passengers and the guard. The station master was tried under s. 101 of the Indian Railways Act (IX of 1890) for breach of Rules 99 (*c*) and 100 of the General Rules. The trying Magistrate acquitted the accused on the ground that it was the act of the driver of the up passenger that was immediately responsible for the collision. The Government having appealed :—*Held*, setting aside the order of acquittal, that the disregard by the accused of r. 100 enhanced the danger to passengers; and it was the risk thus entailed which rendered the rule-breaker liable to punishment. *Held*, also, that as regards the punishment, the gravity of the offence should be estimated not by the actual ultimate consequence but by the risk involved, for the rule-breaker might be punished even though no accident occurred. EMPEROR *v.* RAMCHANDRA HARI (1913). **I. L. R. 37 Bom. 685**

——— s. 140—*Notice of suit, upon whom to be served.* Under s. 140, Indian Railways Act (IX of 1890), notice of suit against a Railway Company can only be served upon the Agent unless it can be shown by evidence that some other officer of the Company had authority to receive the notice. SESHACHELLAM CHETTY *v.* TRAFFIC MANAGER, NIZAM'S GUARANTEED STATE RAILWAY (1913) **I. L. R. 36 Mad. 65**

RATEABLE DISTRIBUTION.

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), ss. 276, 295. **I. L. R. 37 Bom. 138**

——— *Deposit by Judgment-debtor—Civil Procedure Code (Act V of 1908), O. XXI, r. 89, and s. 73—Alteration in s. 73, effect of.* When money is paid into Court under O. XXI, r. 89, of the Civil Procedure Code, 1908, there can be no rateable distribution under s. 73 of the Code. The scope of s. 73 of the new Code of Civil Procedure (Act V of 1908) is far wider than that of s. 295 of the old Code (Act XIV of 1882), yet the effect of the enactment in s. 310A of the old Code, which is reproduced in O. XXI, r. 89, of the new Code, remains unaltered. HARAI SAHA *v.* FAIZLI RAHMAN, (1913) . **I. L. R. 40 Calc. 619**

RECEIPT.

See STAMP ACT (II OF 1899), ss. 2 (23), 62, 63 . **I. L. R. 35 All. 290**

RECEIVER.

1. ——— *Insolvency—Jatri or "Pilgrim-business," profits from—Priest, office of*

RECEIVER PENDENTE LITE.

See RELIGIOUS TRUST.
I. L. R. 40 Calc. 251

RECISION OF CONTRACT.

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 95 . **I. L. R. 37 Bom. 158**

RECITAL.

See EVIDENCE . **I. L. R. 35 All. 194**

REDEMPTION.

See MORTGAGE . **I. L. R. 35 All. 48; I. L. R. 36 Mad. 426**

REDEMPTION OF MORTGAGE.

——— extension of time for—

See CIVIL PROCEDURE CODE, 1908, O. XXXIV, R. 8 . **I. L. R. 35 All. 116**

REFERENCE BY COLLECTOR OF RANGOON.

See APPEAL TO PRIVY COUNCIL.
I. L. R. 40 Calc. 21

REFERENCE BY COURT.

See BOOKS OF REFERENCE.
I. L. R. 40 Calc. 898

REFUND OF COURT-FEE.

——— *Appeal, over-valuation of—Partial decree—Memorandum of appeal, over-valuation of—Court-fee paid in excess by inadvertence—Practice.* The appellant's agent having, by inadvertence, over-paid court-fee on the memorandum of appeal, the High Court directed the Taxing Officer to issue the necessary certificate to enable the appellant to obtain a refund of the excess court-fee from the Revenue authorities. *In the matter of Grant, 14 W. R. 47,* referred to. HARIHAR GURU *v.* ANANDA MAHANTY (1912)
I. L. R. 40 Calc. 365

REFUSAL TO GRANT TIME.

See ATTACHMENT **I. L. R. 40 Calc. 105**

REGISTERED AND UNREGISTERED DOCUMENTS.

See REGISTRATION ACT (XVI OF 1908), s. 50 . . **I. L. R. 35 All. 271**

REGISTERED LEASE.

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 110, 116.
I. L. R. 37 Bom. 656

REGISTRATION.

See REGISTRATION ACT (III OF 1877).

See REGISTRATION ACT (III OF 1877), s. 17 (*n*) . . **I. L. R. 35 All. 202**

See REGISTRATION ACT (XVI OF 1908).

See REGISTRATION ACT (XVI OF 1908), ss. 31, 32, 52 AND 87.
I. L. R. 35 All. 34

REGISTRATION—*concld.*

See REGISTRATION ACT (XVI OF 1908), s. 32 . . **I. L. R. 35 All. 72**

See REGISTRATION ACT (XVI OF 1908), s. 32 . **I. L. R. 35 All. 134**

——— *Gift—Consent of donor to registration of deed of gift of immovable property not essential to validity of gift. Held,* that it is not essential to the validity of a gift of immovable property that registration of the deed by which such gift is effected should be either at the instance of or with the consent of the donor. *Ramamirtha Ayyan* v. *Gopala Ayyan, I. L. R. 19 Mad. 433,* dissented from. PARBATI *v.* BAIJ NATH PATHAK (1912) . . . . **I. L. R. 35 All. 3**

REGISTRATION ACT (III OF 1877).

——— s. 17, cl. (*i*)—

See RES JUDICATA
I. L. R. 36 Mad. 46

——— s. 17 (*n*)—*Mortgage—Agreement to relinquish portion of principal and all interest—Acknowledgment—Registration. Held,* that an agreement executed by a mortgagee after the date of the mortgage whereby he relinquished a certain part of the principal and all interest, past and future, on the mortgage in lieu of certain services rendered by the mortgagor to the mortgagee was a document which required registration to make it admissible in evidence, and it could not be said to be an acknowledgment of payment within the meaning of the exception contained in s. 17, clause (*n*), of the Indian Registration Act, 1877. GOBARDHAN SAHI *v.* JADUNATH RAI (1913)
I. L. R. 35 All. 202

——— ss. 17 (*b*) (*c*) and 49—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 54 . **I. L. R. 37 Bom. 53**

——— s. 21—*Registration—How far a misdescription of property comprised in a deed may invalidate registration.* Where one of several villages comprised in a registered mortgage deed was described as being in a wrong *tappa,* the description being, notwithstanding this error, sufficient for identification, it was *held* that the misdescription was not sufficient to invalidate the mortgage as regards the village in question. *Beni Madho Singh* v. *Jagat Singh, 10 All. L. J. 33,* referred to. PARSOTAM DAS *v.* PATESRI PARTAB NARAIN SINGH (1913) . **I. L. R. 35 All. 250**

——— s. 77—*Suit for registration of a document—Limitation—Order striking off a case for compulsory registration of a document—Review—Final order refusing to register—Period of thirty days when to run from.* Where the plaintiff applied to the Registrar for compulsory registration of a deed of sale and the case was struck off, but on the plaintiff's application for review the case was restored and the Registrar after taking evidence on both sides made his final order refusing to register the deed, and the plaintiff instituted a suit in the Civil Court under s. 77 of the Registration Act

REGISTRATION ACT (III OF 1877)—*contd*

———— s 77—*concld*

within 30 days from the date of this order *Held* that the final order of the Registrar made after the restoration of the case was the order of refusal in respect of which the plaintiff was entitled to institute a suit in the Civil Court and the plaintiff's suit was not barred by limitation SHEIK SAJED *v* SARADA PORSAD CHAUDHURY (1913)
17 C W N 585

REGISTRATION ACT (XVI OF 1908)

———— ss 17 (*b*) 49—*Document compulsorily registrable—Assignment of decree for sale of immoveable property* *Held* that a deed of assignment of a final decree for the sale of mortgaged property under O XXXIV r 5 of the Code of Civil Proce

10 All L J 167 distinguished *Abdul Majid* v *Muhammad Faiz ullah I L R 13 All 89* and *Baij Nath Lohea* v *Binoyendra Nath Palit 6 C W N 5* followed MUMTAZ AHMAD *v* SRI RAM (1913) **I L R 35 All. 524**

———— ss 31, 32 52, 87—*Registration— Presentation —Presentation by a person not an authorised agent of the executant—Procedure—Invalid presentation not a mere question of procedure* Where a document is presented for registration by a person not duly authorized to present it according to the law applicable to registration of documents such presentation is altogether invalid and its subsequent registration made upon the admis

who had no for registra ssa v Abdur d KHALIL UD DIN AHMAD *v* BANNI BIBI (1912)
I L R 35 All. 34

———— s 32—

1. ———— *Presentation — Presentation by a servant of the mortgagor in the presence of the mortgagor* Where a mortgage deed was handed over to the sub registrar for the purpose of registration by a person other than the mortgagor but the mortgagor was present assenting to the registration of the document with full knowledge of what was being done in the office of the sub registrar *Held* that the presentation was a valid presentation within the meaning of s 32 of the Registration Act *Nath Mal* v *Abdul Wahid Khan I L R 34 All 355* followed *Mujib un nissa* v *Abdur Rahim I L R 23 All 233* distinguished *Jambu Prasad* v *Aftab Ali Khan I L R 34 All 331* not followed KARTA KISAN *v* HARNAM CHAND (1912)
I. L. R 35 All 72

2. ———— *Registration— Presentation —Physical delivery of document by person not authorized to present it but executant*

REGISTRATION ACT (XIV OF 1908)—*concld*

———— s 32—*concld*

present and assenting whilst registration was going on Where it is shown that prior to the registration of the document by the duly authorized official a person competent to present the document for registration was present before that official assenting to the registration the requirements of the Registration Act are sufficiently complied with *Mujib un nissa* v *Abdur Rahim I L R 23 All 233* and *Karta Kishan* v *Har Narain, I L R 35 All 72* referred to ATMA RAM *v* UGRA SEN (1912) **I L R 35 All 134**

———— s 50—*Registered and unregistered documents—Priority—Effect on rights of prior unregistered mortgagee of sale in execution of a decree on a subsequent registered mortgage* When property is sold in execution of a decree on a subsequent registered mortgage taking priority over a

be recoverable from the surplus if any left after the satisfaction of the registered mortgage DHAN PAL SINGH *v* BUDH SINGH (1913)
I L R 35 All. 271

RE GRANT OF LAND

See LAND REVENUE CODE (BOM ACT V OF 1879 AS AMENDED BY BOM ACT VI OF 1901) s 56
I L R 37 Bom. 692

REGULATION (VIII OF 1793)

———— ss 54, 55—

See ABWAB **I L R. 40 Calc 806**

REGULATION (XXV OF 1802)

See IMPARTIBLE ZAMINDARI
I L R. 36 Mad. 325

REGULATION (MADRAS) XXV OF 1802

———— *Impartible estate proof of—Sanad granted under Madras Reg XXV of*

subject of a *sanad* in common form under Reg (Mad) XXV of 1802 *Held* that it must be held to be partible and descendible according to the ordinary rules of inheritance of the Hindu Law unless the *sanad* could operate as a confirmation of a previously existing estate which from its nature or by virtue of some special family custom was impartible and descendible to a single heir Whether or not at or prior to the date of the *sanad* the grantee of the *sanad* had an estate in the nature of a Raj and so descendible to a single heir was a question of fact to be determined on the evidence Where on such a question there were concurrent findings of the Courts in India

REGULATION (MADRAS), XXV OF 1802—*concld.*

the practice of the Privy Council was not to disturb the finding unless they were satisfied that it was not justified by the evidence. The principles applicable in determining the questions of impartibility in cases of this description re-affirmed. VENKATARAMAYYA APPA ROW *v.* PERTHASARATHY APPA ROW (1913) . . **17 C. W. N. 1221**

REGULATION (VII OF 1822).

———— *Settlement proceedings under Reg. VII of 1822, read with Reg. IX of 1825—Raiyati land held by Settlement Officer to belong to defendant's and not to plaintiff's holding—Decision if "award"—plaintiff's suit to recover—Limitation—Limitation Act (XV of 1877), Sch. II, Arts. 14, 46—Tenant, if may sue to recover from person with whom land settled by landlord and by whom he has been dispossessed.* Where a Collector in settling land under Reg. VII of 1822 decided that a certain area of land did not form part of the plaintiffs' holding as alleged by them, but was part of the defendants' holding: *Held*, that the decision of the Collector was not an award within the meaning of Art. 46 of Sch. II of the Limitation Act of 1877. *Held*, further, that an order by which land belonging to the paintiffs was given by the Collector to others without any warrant of law need not be set aside by the plaintiffs and Art. 14 of Sch. II of the Limitation Act does not apply to a suit by the plaintiffs to recover the land. It was not intended by the provisions of Reg. VII of 1822 that the Collector should decide disputes as to title between raiyats in which the zemindars or *sadar malgujars* had no interest and which could in no way affect the assessment. S. 14 of the Regulation does not apply to a case in which rival tenants claim, not only a tenancy of the same nature, but the same land under the same nature of tenancy. The decision in *Binad Lal Pakrashi* v. *Kalu Pramanik, I. L. R. 20 Calc. 709*, was never intended to be applied to a tenant seeking to recover his own holding. RAJANI KANT MUKERJI *v.* RAM DULAL DAS (1911)
17 C. W. N. 55

———— ss. 7, 9.—*Rent, enhancement of—Settlement officer, powers of—Jamabandi.* Where a settlement was carried out under Reg. VII of 1882: *Held*, that the Settlement Regulation did not authorise the settlement of fair rents. All that the Settlement Officer was entitled to do was to record the existing rent. ISHUR CHANDRA SARKAR *v.* TROYLUKHYA NATH SINGHA (1913)
17 C. W. N. 865

REGULATION (VI of 1831).

See PENSIONS ACT (XXIII OF 1871)
I. L. R. 36 Mad. 559

REGULATION (IX OF 1833).

———— ss. 20, 21—
See COLLECTOR **I. L. R. 40 Calc. 465**

RELATIONSHIP.

———— evidence of—
See HINDU WIDOW.
I. L. R. 40 Calc. 555

RELIGIOUS ENDOWMENT.

See PARTIES . **I. L. R. 40 Calc. 323**
See RES JUDICATA.
I. L. R. 37 Bom. 224

RELIGIOUS ENDOWMENTS ACT (XX OF 1863).

———— s. 14—
See PARTIES . **I. L. R. 40 Calc. 323**

RELIGIOUS TRUST.

See TRUST . **I. L. R. 40 Calc. 232**

———— *Deed of endowment—Sole shebait—Appointment of new shebait in case of death—Appointment how to be made—Receiver pendente lite.* Trusts will not be allowed to fail for want of a trustee, and, consequently, if the nominee dies before qualifying or afterwards, the Court will appoint a trustee. *In re Orde, 24 Ch. D. 271, Re Ambler's Trust, 59 L. T. N. S. 210, Gunson* v. *Simpson, L. R. 5 Eq. 332, In re Smirthwaite's Trusts, L. R. 11 Eq. 251,* referred to. Where a *shebait* is dead and there is no provision in the deed of endowment about the mode in which the office is to be filled up, the Court will not read into the deed of endowment a provision for appointment to the office of *shebait* which is not to be found therein. It becomes incumbent upon the representatives of the founders to make an appointment to the office of *shebait,* and upon failure to do so the Court has power to appoint a new trustee, and will exercise this power whenever there is a failure of a suitable person to perform the trust either from original or supervenient disability to act. *Sital Dass Babaji* v. *Protap Chandra Sarma, 11 C. L. J. 2,* referred to. The appointment of a fit and proper person to be a new trustee is not a matter of arbitrary discretion of the Court. The appointment must be made subject to well known and defined rules. *In re Tempest, L. R. 1 Ch. App. 485,* referred to. Where a receiver appointed *pendente lite* was directed by the subordinate Judge to continue to manage the properties on the scheme laid down in the deed of endowment, pending an agreement between the parties to appoint a *shebait*: *Held,* that the proper course to follow was, either to dismiss the suit, or, if the parties so desired, to appoint a *shebait* and place the properties in his hands. This latter order could be properly made only after amendment of the prayer in the plaint. RAJ KRISHNA DEY *v.* BIPIN BEHARY DEY (1912)
I. L. R. 40 Calc. 251

RELINQUISHMENT OF SERVICE.

See MASTER AND SERVANT.
I. L. R. 35 All. 132

REMAND

See CIVIL PROCEDURE CODE, 1908 O XLI R 23, O XLIII R 1 (*u*) I L R 35 All 427

See CIVIL PROCEDURE CODE 1908 O XLI R 23 I L R 36 Mad 492

See CIVIL PROCEDURE CODE 1908 O XLI, R 33 I L R 37 Bom 289

——— plea of limitation taken on—

See ACCOUNT SUIT FOR I L R. 40 Calc 108

REMOVAL OF CASTE DISABILITIES ACT (XXI OF 1850)

See HINDU LAW—JOINT FAMILY I L R 40 Calc 407

——— s 1.—

See HINDU LAW—WIDOW I L R 35 All 466

RENT

See LANDLORD AND TENANT I L R 35 All. 19

See LIMITATION ACT (IX OF 1908) SCH I ART 110 I L R 36 Mad 438

See LIMITATION ACT (IX OF 1908) SCH I ARTS 110 116 I L. R 37 Bom. 656

RENT, SUIT FOR

See AGRA TENANCY ACT (II OF 1901) S 34 I L R 35 All. 512

See JURISDICTION OF CIVIL COURT S 34 I L R 40 Calc 402

1. ——— *Private lands—Madras Estates Land Act (I of 1908) ss 3 (10) 19 and 189* A revenue Court has no jurisdiction to try a suit for rent of private lands as defined in s 3 (*10*) of the Madras Estates Land Act (I of 1908) such a suit must be brought in a civil Court RAJA APPA RAO BAHADUR *v* NAGANNA (1913) I L R 36 Mad. 7

2 ——— *Evidence admissibility of—Previous decree for rent obtained by a co sharer if relevant on the question of rent—Res inter alios acta* Where a tenant holds lands under several landlords under one contract of tenancy and each co sharer claims to collect rent proportionately to his share a decree for rent obtained in a previous suit by one co sharer is relevant for the determ nation of the question of the rate of rent in a subsequent suit for rent by another co sharer who was joined as a *pro forma* defendant in the former suit *Ram Ranjan* v *Ram Narain I L R 22 Calc 533 Tepu Khan* v *Rajani Mohun Das I L R 25 Calc 522* and *Abdul Ali* v *Raj Chandra Das 10 C W N 1084* referred to RAMADIN RAI *v* DHUNWANTI KOER (1912) 17 C W N 1016

RENT DECREE

See EXECUTION OF DECREE I. L. R. 40 Calc 623

RENT RECOVERY ACT (BENG VIII OF 1865)

——— ss 4, 5, 16—

See EXECUTION OF DECREE I L R 40 Calc 623

RENT RECOVERY ACT (MAD VIII OF 1865)

——— ss 9 and 10—

See LIMITATION ACT (IX OF 1908) SCH I, ART 110 I L R 36 Mad 438

RENT RECOVERY ACT (VIII OF 1865)

——— s 11—

See PATTA I L R 36 Mad. 4

REPEAL

See CIVIL PROCEDURE CODE 1908 O XLI R 33 I L R 37 Bom 289

See LIMITATION I L R 37 Bom 231

REPRESENTATIVE IN INTEREST

See EVIDENCE I L R 40 Calc 891

RE PUBLICATION

See WILL I L R 40 Calc 192

RES JUDICATA

See CIVIL PROCEDURE CODE 1908 s 11 I L. R. 35 All. 111

See CIVIL PROCEDURE CODE 1908 s 11 I L R 37 Bom. 172

See CIVIL PROCEDURE CODE 1908, s 11 I L R. 35 All 187

I L. R. 37 Bom. 307, 563

See COMPANIES ACT 1882 ss 6 40 41 I L R 40 Calc 1

See ENHANCEMENT OF RENT I L R 40 Calc 29

See LIMITATION ACT (XV OF 1877) s 19 AND SCH II ART 148 I L R 35 All 227

See REVIEW, APPLICATION FOR I L R 40 Calc 541

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land not in suit and a decree was passed in terms of the compromise in so far as it related to the property sued for to render the compromise available as a defence to a future suit as regards property not formerly sued for it must have been registered in accordance with the provisions of the Registration Act (III of 1877) s 17 If any portion of a *razinama* has not passed into a decree or order of Court it is *primâ facie* difficult to see how a recital of it in the proceedings of the Court or its inclusion in pleadings put before the Court will bring it within the operation of cl (i) of

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ANNUAL DIGEST

OF

THE HIGH COURT REPORTS

AND OF

THE PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA,

1917.

A

ABANDONMENT.

——— of a child—

See PENAL CODE (ACT XLV OF 1860) 317 . . I L. R. 41 Bom 152

ABATEMENT OF SUIT.

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ABISHEGAM.

——— effect of—

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ABWAB.

——— *Reg V of 1812, s 3—*

accepted for years as good law, if may be departed from by Division Bench A *kabuliyat* after stating that the annual rent was to be Rs 3,351 4 pro

sum amicably then you shall deduct the same from the money remitted to me as the rent, or sue for the amount along with or separately from, the arrears of rent I shall not take objections thereto". *Held*, on the construction of the *kabuliyat*,

ABWAB—*concld.*

though not strictly necessary for the decision of the case, having been acted upon since 1885, should not be departed from by Division Benches of the Court *Per* N R CHATTERJEA, *J* —Though more sums than one may constitute the rent, it is not every sum forming part of the consideration

form part of the rent, the fact that it has been stipulated to be paid separately from the rent and also the fact that it is not included in the instalments of the rent have been considered as having material bearing on the question BEJOY SING DUDHURIA *v* KRISHNA BEHARY BISWAS (1917) 21 C. W. N. 959

ACCELERATION OF ESTATE.

——— by the widow to next reversioners—

See HINDU LAW—WIDOW I. L. R. 41 Bom. 93

ACCEPTANCE.

See BILL OF EXCHANGE I. L R. 41 Bom. 566

ACCOUNT.

See SUIT FOR ACCOUNT

See COMMISSIONER I L R. 41 Bom. 719

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), s 13 I. L. R. 41 Bom 453

——— suit for—

See COMMON MANAGER I. L. R. 44 Calc. 800

——— *Limitation Act (XV of 1877), Sch II, Art 89, and s 8—Principal and Agent—Death of Principal leaving sons some of whom were minors—Proprietor appointed by co-proprietors manager of estate for payment of joint debts—Omission to bring cross-appeal to High Court or file cross-objections under s 561, Civil Procedure Code, 1882—Bar to decree for claim in full on appeal*

ACCOUNT—*concld.*

to Privy Council. In this case, which was an appeal from the decision of the High Court in *Chandra Madhab Barua* v. *Nobin Chandra Barua, I. L. R. 40 Calc. 108*, their Lordships of the Judicial Committee found that there was no evidence of any kind that a demand for, and refusal of, accounts was made after the death of the plaintiffs' (appellants') father; and that there was nothing in the plaint to justify the inference drawn by the High Court in that respect adversely to the plaintiffs. *Held*, that the minor plaintiffs being entitled to the benefit of s. 8 of the Limitation Act, 1877, and Art. 89 of Sch. II of that Act being applicable to the suit, there was nothing in the provisions of that Article to protect the defendant (respondent) against the liability to render accounts from July, 1896 (as decreed by the Subordinate Judge) and limit his liability to do so only from August, 1901, (as decided by the High Court). In the absence of any cross-appeal by the plaintiffs to the High Court, or any cross-objections filed by them under s. 561 of the Civil Procedure Code, 1882, they could not obtain on this appeal a decree for accounts for the whole period of the agency, but they were entitled to the restoration of the order of the Subordinate Judge for accounts for the longer period. NOBIN CHANDRA BARUA *v.* CHANDRA MADHAB BAURA (1916) . . . **I. L. R. 44 Calc. 1**

ACCOUNTANT-GENERAL.

See EXECUTION OF DECREE.
I. L. R. 44 Calc. 1072

ACCRETION.

———— gradual—

See ALLUVION . **I. L. R. 40 Mad. 1083**

ACCUSED PERSON.

————statement of—

See CRIMINAL PROCEDURE CODE, S. 364.
I. L. R. 39 All. 399

ACKNOWLEDGMENT.

See ACKNOWLEDGMENT OF DEBT.

See LEASE . . **I. L. R. 40 Mad. 910**

See LIMITATION ACT (IX OF 1908), S. 20.
I. L. R. 41 Bom. 166

———— conditional, operation of—

See LIMITATION ACT (IX OF 1908), S. 19.
I. L. R. 40 Mad. 701

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ACQUITTAL.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 439.
I. L. R. 41 Bom. 560

See SANCTION FOR PROSECUTION.
I. L. R. 44 Calc. 970

———— *Reference therefrom to High Court by District Magistrate—Revision, hearing of, on evidence, whether appeal—Appeal from acquittal by he Local Government—Criminal Procedure Code (Act V of 1898), ss. 417, 435, 438—Jurisdiction—Practice.* In the case of an acquittal, when the Local Government has not preferred an appeal under s. 417 of the Criminal Procedure Code, the High Court ought not to interfere in revision,

ACQUITTAL—*concld.*

on a reference under s. 438, where it cannot do so without practically hearing the case on the evidence as an appeal in order to satisfy itself that the opinion of the referring Court is correct, though it has jurisdiction to intervene in revision in such cases. *Faujdar Thakur* v. *Kasi Chowdhuri, I. L. R. 42 Calc. 612; 19 C. W. N. 184*, referred to. HRISHIKESH MANDAL *v.* ABADHAUT MANDAL (1916) . . . **I. L. R. 44 Calc. 703**

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———— **1846—I.**

See LEGAL PRACTITIONERS' ACT, 1846.

———— **1850—XVIII.**

See JUDICIAL OFFICERS' PROTECTION ACT.

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See CASTE DISABILITIES REMOVAL ACT.

———— **1852—XVIII.**

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———— **1858—XXXV.**

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———— **1859—XI.**

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———— **1872—IX.**

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——— **1877—III.**

See Registration Act.

——— **1877—XV.**

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——— **1881—V.**

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——— **1881—XXVI.**

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——— **1882—V.**

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——— **1882—XIV.**

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——— **1910—II.**

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——— **1911—III.**

See Criminal Tribes Act

——— **1912—IV.**

See Lunacy Act.

——— **1913—VI.**

See Mussalman Wakf Validating Act.

——— **1913—VII.**

See Companies Act.

——— **1915—I.**

See Emergency Legislation Continuance Act

ACTIONABLE CLAIM.

——— nature of—

See Mortgage . **I. L. R. 40 Mad. 683**

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See Insolvency.

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——— order of—

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ADMINISTRATION.

——— order of—

See Insolvency.

I. L. R. 44 Calc. 1016

ADMINISTRATION SUIT.

——— *Procedure and Practice—Valuation of suit—Creditor's action against trustee for administration of trust and for accounts—Plaintiff representing body of creditors—Jurisdiction—* [illegible]

entitled to place his own valuation on the relief claimed. On the analogy of s. 11 of the Court-

ADMINISTRATION SUIT—*concld.*

fees Act, after the preliminary decree has been made in a creditor's suit for administration and the other creditors have been invited to establish their claim, if any, against the debtor, each creditor who puts forward a claim not already transformed into a judgment-debt, may well be required to pay court-fees *ad valorem* on his application, as if it were a plaint in a suit for the recovery of the sum he claims. The valuation for the purpose of jurisdiction must be identical under s. 8 of the Suits' Valuation Act, with the valuation for the purpose of court-fees. Where a suit is valued on the basis of the claim of the plaintiff and instituted in the Court of the lowest grade of pecuniary jurisdiction and a claim is thereafter preferred by a creditor, who could, in respect of his claim, institute a suit only in a Court of higher grade, the remedy will be the transfer of the suit at that stage from the Court of the lowest grade to the Court competent to try a claim of enhanced value. SHASHI BHUSHAN BOSE *v.* MANINDRA CHANDRA NANDY (1916).
I. L. R. 44 Calc. 890

ADMINISTRATOR.

See MAHOMEDAN LAW—PRE-EMPTION.
I. L. R. 41 Bom. 636

ADMISSION.

———— **by defendant—**

See EVIDENCE . **I. L. R. 44 Calc. 130**

ADOPTED SON.

See HINDU LAW—WIDOW.
I. L. R. 41 Bom. 93

———— **of a Sudra, share of, on partition—**

See HINDU LAW—PARTITION.
I. L. R. 40 Mad. 632

ADOPTION.

See HINDU LAW—ADOPTION.

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 118 . **I. L. R. 41 Bom. 728**

———— **by minor widow—**

See HINDU LAW—ADOPTION.
I. L. R. 40 Mad. 925

———— **evidence of—**

See HINDU LAW—ADOPTION.
I. L. R. 44 Calc. 201

ADULTERY.

See DIVORCE . **I. L. R. 44 Calc. 1091**

ADVERSE POSSESSION.

See DILUVIATED LAND.
I. L. R. 44 Calc. 858

See ESTOPPEL . **I. L. R. 44 Calc. 145**

See EVIDENCE . **I. L. R. 39 All. 696**

See LIMITATION ACT (IX OF 1908), S. 18; SCH. I, ARTS. 124, 144.
I. L. R. 39 All. 636

See MORTGAGE . **I. L. R. 39 All. 423**

1. ———————— *Simple Mortgage—Adverse possession, against mortgagor, whether adverse against mortgagee in case of simple mortgage—Limitation—Limitation Act (IX of 1908) s. 28, Sch. I, Art. 144.* Adverse possession against the mort-

ADVERSE POSSESSION—*concld.*

gagor is not *per se* adverse also against the mortgagee in the case of a simple mortgage. *Per* SANDERSON, *C.J.* Adverse possession affects the interest which the person, who was entitled to immediate possession, had at that time. *Per* MOOKERJEE, *J.* s. 28 of the Limitation Act clearly contemplates that the person, whose right is extinguished by lapse of time, is a person entitled to institute a suit for possession of the property. *Karan Singh* v. *Bakar Ali Khan, I. L. R. 5 All. 1; L. R. 9 I. A. 99,* and *Prannath Roy Chowdhury* v. *Rookea Begum, 7 Moo. I. A. 323,* distinguished. *Aimadar Mandal* v. *Makhan Lal Dey, I. L. R. 33 Calc. 1015; 10 C. W. N. 904,* and *Parthasarathy Naicken* v. *Lakshmana Naicker, I. L. R. 35 Mad. 231; 21 Mad. L. J. 467,* referred to. *Nallamuttu* v. *Betha Naicken, I. L. R. 23 Mad. 37,* dissented from. PRIYA SAKHI DEBI *v.* MANBODH BIB (1916) . . . **I. L. R. 44 Calc. 425**

2. ———————— *Adverse possession, acts necessary to constitute—Adverse possession against putnidar previous to purchase by zamindar of putnidar's interest, effect of, on purchaser.* The plaintiffs sued for declaration of their title to and *khas* possession of a certain tank which the plaintiffs claimed they held under a lease granted to them in 1883 by some persons who were in possession as *putnidars* under the first defendant whose case on the other hand was that the tank was included in a different *putni* held under him by different *putnidars* and that in 1899 he purchased the *putni* right of the latter and was consequently entitled to take possession of the tank. It was found that the tank in question was not included in the *putni* of the plaintiffs' lessors but in the other *putni* as alleged by the defendant but since the date of their lease the plaintiffs had been in occupation of the tank on the basis of their lease and had in assertion of their right let it out to sub-tenants from time to time, mortgaged it and re-excavated it: *Held,* that the acts exercised by the plaintiffs in respect of the disputed tank constituted adverse possesion and were sufficient to extinguish the title of the defendant's vendors on the date of the purchase by the defendant who consequently did not by his purchase acquire any title to the tank in dispute and could not successfully resist the claim of the plaintiffs for declaration of title and recovery of possession. BIJAY CHAND MAHATAP BAHADUR *v.* ISWAR CHANDRA DAS (1916).
21 C. W. N. 199

3. ———————— *Possession of trespasser during currency of lease, if adverse to lessor—Long possession by trespasser, if gives rise to equity, when his case that he held bona fide under person whom he believed to be owner found false.* *Held,* on a review of authorities, that where property has been let out in lease, the possession of a trespasser does not become adverse as against the lessor until the termination of the lease. Trespassers whose case that they *bona fide* held the land under a person whom they believed to be the owner thereof is found to be false are not entitled in equity to protection against ejectment. HAJRA SARDARA *v.* KUNJA BEHARY NAG CHOWDHURY (1917).
21 C. W. N. 1001

ADVICE.

———— **improper, to client—**

See PROFESSIONAL MISCONDUCT.
I. L. R. 40 Mad. 69

AGENCY.

——— *Joint principals—Joint power of attorney—Execution of mortgage in pursuance of the authority—Death of one of the principals, effect on the power of attorney—Position of the parties, object of the power and the nature of the*

in favour of R P, the fourth brother (all the brothers living jointly as members of a Mitakshara family) and thereby authorized him to borrow money on their behalf and, as security for the loan, to mortgage their joint property Subsequently R S died without issue After his death a mortgage was executed by R P and R K on their own behalf and by R P as attorney for S P A second mortgage was executed of the same properties by R P on his own behalf and as attorney for R K and S P A third mortgage of the same properties was executed by R P on his own behalf and as attorney for S P, R K having died previously to the execution of the third mortgage, leaving certain minor sons, and R P also purported to execute the third mortgage as guardian of these minor sons of R K *Held* that the intention of the parties was that the power of attorney should continue as long as the property remained undivided, and so the deaths of R S and R K did not revoke the power of attorney *Held*, also, that consequently the mortgages were valid and binding on the joint properties *Per* MOOKERJEE, *J* —We cannot hold, as an inflexible rule of law, that whenever two principals appoint an agent to take charge of some matter in which they are jointly interested, the death of one of them terminates the authority of the agent not merely as regards the deceased, but also as regards the surviving principal We have, in each case, to determine the true intention of the parties to the contract from the terms thereof and from the surrounding circumstances SITAL PROSHAD, *Re* (1916) . . **21 C. W. N. 620**

AGGRIEVED PARTY.

——— **remedies of—**

See DECREE . **I. L. R. 44 Calc. 627**

AGNATES.

See CUSTOM **I. L. R. 44 Calc. 749**

AGRA TENANCY ACT (II OF 1901).

——— **ss 4, 167**—*Grove—Suit by zamindar for part of produce of grove—Rent—Civil and Revenue Courts—Jurisdiction* Where a zamindar permits a person to plant a grove in his zamindari upon the condition of the grove holders paying yearly to the zamindar a fixed proportion of the produce thereof, the part of the produce paid to the zamindar is rent and a suit for the recovery of the same lies in a Revenue and not in a Civil Court RAGHUBIR RAI *v* MADHO (1917) . **I. L. R. 39 All. 605**

——— **ss 10, 20, 83**—*Sale of zamindari—Agreement to surrender ex proprietary rights—Suit for damages for*

sion—Contract

—Contract Act

this appeal th :

mittee affirmed the decision of the High Court at Allahabad in the case of *Ikram ullah Khan* v *Moti Chand, I L R 33 All 695*, holding that an agree

AGRA TENANCY ACT (II OF 1901)—*contd*

——— **s 10**—*concld*

ment by the defendants for relinquishment of all their "*sir*" and "*khudkasht*" lands, and ex proprietary rights therein to the plaintiffs, none of whom were at the execution of the agreement proprietors, landholders or co sharers in the land to be relinquished, and agreeing to pay damages for any breach of the contract by them, was illegal and void as being in contravention of the policy of Act II of 1901 (Agra Tenancy Act) MOTI CHAND *v* IKRAM ULLAH KHAN (1916)

I. L R 39 All. 173

——— **s. 41—**

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), s 36

I. L. R 39 All. 318

——— **s 79**—*Fixed rate holding—Purchase of holding at auction sale in execution of a decree—Formal possession obtained—Suit for physical possession—Jurisdiction* The purchasers of a fixed rate holding at an auction sale held in pursuance of a decree on a mortgage applied for and obtained formal possession of the holding, the zamindar, however, refused to allow them to cultivate, and in consequence thereof they instituted, in a Civil Court a suit for possession of the holding *Held*, that the position of the plaintiffs was that of tenants who had been wrongfully ejected by the zamindar, to which s 79 of the Agra Tenancy Act, 1901, applied and that no suit would lie in a Civil Court *Collector of Benares* v *Shiam Das, 13 All L J 329*, distinguished ABDUL HASAN *v* MAKHDUM BAKHSH (1917) . **I. L R. 39 All. 455**

——— **s 95—**

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), ss 203 TO 207

I L R 39 All. 711

——— **s 158**—*United Provinces Land Revenue Act (III of 1901), s 34—Muafi grant—Resumption—Grant to mahant of temple* *Held*, that s 158 of the Agra Tenancy Act, 1901, and s 34 of the United Provinces Land Revenue Act, 1901, apply to land granted rent free for charitable purposes to the *mahant* of a temple Where, therefore, land so granted has been held for more than fifty years, and by two or more successors to the original grantee, it cannot be resumed BHARAT DAS *v* NANDRANI KUNWAR (1917) . **I L. R. 39 All. 689**

——— **s. 164—**

See CIVIL PROCEDURE CODE (1908), O XXVI, RR 9, 16, 17, 18

I L. R. 39 All. 694

——— **s 167**—*Jurisdiction—Civil and Revenue Courts—Suit by assignee of right to receive rent from fixed-rate tenant for declaration of plaintiff's title and for an injunction against zamindar and tenant* The transferee of an assignee of the zamindar of the right to realize rent from a tenant at fixed rates of certain plots of land in a village filed a suit in a Civil Court asking for (i) a declaration of the plaintiff s right to receive the said rent, in virtue of a certain document styled a "perpetual lease", and (ii) a perpetual injunction against the zamindar and the fixed rate tenant whose rent was assigned *Held*, that the Civil Court had jurisdiction to entertain the suit SIDDIQA BIBI *v* RAM AUTAR PANDE (1917).

— **I. L. All.**

AGRA TENANCY ACT (II OF 1901)—*concld.*

———— s. 202—

See CIVIL PROCEDURE CODE (1908), s. 115.
I. L. R. 39 All. 254

AGREEMENT.

See HIRE-PURCHASE AGREEMENT.
I. L. R. 44 Calc. 72

———— ante-decree—

See EXECUTION PROCEEDINGS.
I. L. R. 40 Mad. 233

———— *for sale of immoveable property*—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 54 . **I. L. R. 41 Bom. 438**

———— opposed to public policy—

See CONTRACT ACT (IX OF 1872), s. 23.
I. L. R. 39 All. 51, 58

AGRICULTURIST.

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 60 (*c*).
I. L. R. 41 Bom. 475

———— house of—

See PROVINCIAL INSOLVENCY ACT (III OF 1907), ss. 16, 36, 43.
I. L. R. 39 All. 120

ALIEN.

See BILL OF EXCHANGE.
I. L. R. 41 Bom. 566

ALIENATION.

See HINDU LAW—ALIENATION.

See HINDU LAW—WIDOW.
I. L. R. 41 Bom. 93

———— by father—

See HINDU LAW—ALIENATION.
I. L. R. 41 Bom. 347

———— of widow's estate by Court of Wards—

See HINDU LAW—REVERSIONERS.
I. L. R. 40 Mad. 871

ALIENEE.

See ATTACHMENT.
I. L. R. 44 Calc. 662

ALIEN ENEMY.

———— contract with—

See CONTRACT WITH ALIEN ENEMY.
I. L. R. 41 Bom. 390

———— right of, to sue in a British Court—

See CIVIL PROCEDURE CODE (1908), s. 83.
I. L. R. 39 All. 377

ALLEGIANCE.

See HABEAS CORPUS.
I. L. R. 44 Calc. 459

ALLUVION.

———— *Gradual accretion to an already existing lanka—Slow and imperceptible, meaning of—Land added in the bed of the river by slow, imperceptible, and gradual river action to a known extent of land, applicability of law of accretion to.* The plaintiff-respondent sued for a declaration against Government that a certain *lanka* or alluvial island formed in the bed of the Godavari at a place where it was both tidal and navigable, belonged to him as an accretion to his adjoining *lankas*. It was found by the Court below, with which finding the High Court agreed, that the suit *lanka* was originally formed in contiguity with the plaintiff's land, that it was formed very rapidly, and in some years, during the annual rise of the river, large additions were made, which could not but be perceptible as soon as the water subsided, that portion of the alluvial land was separated from the rest by a channel a few years before the suit and that it was not possible to say that the accretion was slow or imperceptible. *Held*, that the suit land was an accretion to the plaintiff's land, that in applying the rule of English law as to accretions, local physical conditions must be taken into consideration and that in the case of large rivers in India like the Godavari which on occasions leave large and sudden deposits, it is not necessary that the accretion should be slow or perceptible. *Rex (nom. Gifford)* v. *Yarborough, 2 Bligh (N.S.) 147*, and *Attorney-General* v. *M'Carthy, 2 Ir. R. 260*, referred to. *Srinath Roy* v. *Dhinabandhu Sen, I. L. R. 42 Calc. 489*, applied. *Held*, also, that the fact that in 1870 when the suit *lanka* was not as yet formed, the extent and boundaries of the plaintiff's *lankas* were known or ascertainable, did not render the law of accretion inapplicable. *Attorney-General of Southern Nigeria* v. *John Holt & Co. (Liverpool), Limited* [1915], *A. C. 519, 612*, followed. THE SECRETARY OF STATE FOR INDIA *v.* RAJAH OF VIZIANAGARAM (1916).
I. L. R. 40 Mad. 1083

ALTERATION.

See BOND . . **I. L. R. 44 Calc. 154**

ANCESTRAL PROPERTY.

See HINDU LAW—ALIENATION.
I. L. R. 39 All. 485

ANNUITY.

See MORTGAGE . **I. L. R. 39 All. 700**

ANTICIPATORY ATTACHMENT.

See EXECUTION OF DECREE.
I. L. R. 44 Calc. 1072

APPEAL.

See APPEAL, FORUM OF.

See APPEAL IN CRIMINAL CASE.

See APPEAL IN FORMA PAUPERIS.

See APPEAL, RIGHT OF.

See ACQUITTAL . **I. L. R. 44 Calc. 703**

See CIVIL PROCEDURE CODE (1908), s. 2.
I. L. R. 39 All. 393

See CIVIL PROCEDURE CODE (1908), s. 24(4) . . **I. L. R. 39 All. 214**

See CIVIL PROCEDURE CODE (1908), s. 104, O. XLIII, R. 1; O. XXI, R. 90.
I. L. R. 39 All. 191

See CIVIL PROCEDURE CODE (1908) s. 115.
I. L. R. 39 All. 101

See CIVIL PROCEDURE CODE, 1908, s. 195.
I. L. R. 39 All. 147

See CIVIL PROCEDURE CODE, 1908, O. IX, R. 13 . . **I. L. R. 39 All. 13**

See CIVIL PROCEDURE CODE (1908), O. IX, R. 13, O. XVII, R. 3.
I. L. R. 39 All. 143

See CIVIL PROCEDURE CODE (1908), O. X, R. 4, O. XLIII, R. 1.
I. L. R. 39 All. 450

APPEAL—*contd*

See CIVIL PROCEDURE CODE (1908), O XXI, r 66 . I. L. R. 39 All. 415

See CIVIL PROCEDURE CODE, O XXXIV, R 5 . I. L. R. 39 All. 641

See CIVIL PROCEDURE CODE (1908), SCH. II, PARAS 16, 21, O XXIII, R 3 I. L. R. 39 All. 401

See COMPANIES ACT (VII OF 1913), s 38 I. L. R. 41 Bom. 76

See COURT FEE . I. L. R. 39 All. 452

See CRIMINAL PROCEDURE CODE, s 125 I. L. R. 39 All. 466

See CRIMINAL PROCEDURE CODE, s 195 I. L. R. 39 All. 657

See CRIMINAL PROCEDURE CODE, ss 367, 418, 423 . I. L. R. 39 All. 348

See CRIMINAL PROCEDURE CODE, s 403 I. L. R. 39 All. 293

See CRIMINAL PROCEDURE CODE, s 439 I. L. R. 39 All. 549

See DECREE . I L. R. 44 Calc. 954

See HINDU LAW—ADOPTION I. L. R. 40 Mad. 846

See LIMITATION . L. R. 44 I. A. 218

See PROVINCIAL INSOLVENCY ACT (III OF 1907), ss 22, 46 I. L. R. 39 All. 152

See PROVINCIAL INSOLVENCY ACT, 1907, ss 43 (2), 46 . I. L. R. 39 All 171

——— delay in filing—

See LIMITATION ACT (IX of 1908) s 5 I. L. R. 41 Bom. 15

——— from order for appointment of receiver—

See RECEIVER I. L. R. 40 Mad. 18

——— re-hearing of—

See CIVIL PROCEDURE CODE (1908), O XLI, R 21 . I L. R. 39 All. 388

——— right of—

See PROVINCIAL INSOLVENCY ACT (III OF 1907), ss 43 (2) (b) AND 46 (1) AND (2) I. L. R. 40 Mad. 630

1. ——— *Against order of restoration of suit, if lies when defendant has taken some advantage under the order—Costs and allocatur—Protest, absence of* Where a suit which was dismissed for non prosecution was restored on an application on behalf of the plaintiffs and the Court made certain orders in respect of the pay-

2. ——— *Disposal of, effect on primary judgment.* The effect of the disposal of an appeal from the decree of the primary Court is that if it is reversed it is absolutely dead and gone, and if affirmed it is merged in the decree of the superior Court which takes its place for all intents and purposes The fact that an appeal has been dismissed under s 551 of the Code of 1882, or under

APPEAL—*concld*

O XLI, r 11 of the Code of 1908, makes no difference in principle, for the dismissal operates as a decree and supersedes the decree of the lower Court precisely in the same way as a decree of dismissal made after service of notice to the respondent CHANDRA KANTA BHATTACHARYA v LAKSHMAN CHANDRA CHAKRAVARTI (1916) . 21 C. W. N. 430

3. ——— *Heard ex parte—Duty of counsel* Where an appeal is heard ex

JANAKI SING (1916) . 21 C. W. N. 473

APPEAL, FORUM OF.

——— *Suit for accounts in a Munsif's Court—Munsif passing a decree for more than Rs 5,000—Appeal lying to District Court and not to the High Court, under s 13 of the Madras Civil Courts Act (III of 1873)* Where a District Munsif passed a decree for more than Rs 5 000 in a suit for accounts wherein the plaintiff valued the subject matter of the suit at an amount within the pecuniary jurisdiction of the Munsif *Held*, that

laneous Appeal No 131 of 1915, and *Chathanath Madhavi* v *Chathanath Kunhunni Menon, 4 Mad L J. 43,* overruled *Ijjatulla Bhuyan* v *Chandra Mohan Banerjee, I L R 34 Calc 954,* 958, dissented from *Muttammal* v *Chinnana Goundan, I L R 4 Mad 220,* referred to. KANNAYYA CHETTI v VENKATANARASAYYA (1916) I. L. R. 40 Mad. 1

APPEAL IN CRIMINAL CASE

See PRIVY COUNCIL, PRACTICE OF I. L. R. 44 Calc. 876

APPEAL IN FORMA PAUPERIS.

——— *Application to, filed in time—Dismissal of the application, effect of, on appeal—Granting time to pay court fee and payment thereof in time, effect of, on appeal—Practice of pronouncing judgment on holidays, deprecated* An application for leave to appeal *in forma pauperis* accompanying an unstamped memorandum of appeal, filed in time, was rejected by a District Court, some months afterwards, during the Christmas holidays On the reopening day, the appellant applied for, and obtained, from the Court three weeks' time to pay the court fee on the memorandum of appeal The court fee was paid within the time allowed *Held*, (i) that the appeal was in time and must be deemed to have been filed as on the original date of presentation; (ii) that the dismissal of an application to appeal *in forma pauperis* does not necessarily lead to a dismissal of the memorandum of appeal; and (iii) that an Appellate Court has under s 149, Civil Procedure Code, power to grant time to pay the requisite court fee *Bai Kul* v *Desai Manorbhai, I L R. 22 Bom 880,* followed. *Per* SADASIVA AYYAR, J.—The practice of pronouncing judgments during the Christmas holidays for the purpose of swelling the statistics is to be deprecated A statement in a judgment as to an admission made before the Court of first instance should not be doubted lightly by the Appellate Court, especially in the absence of an affidavit of the vakil who appeared

APPEAL IN FORMA PAUPERIS—*concld.*

in the Court of first instance. NALLAVADIVA AMMAL *v.* SUBRAMANIA PILLAI (1916).

I. L. R. 40 Mad. 687

APPEAL, RIGHT OF.

———— *Sanction for prosecution refused by the Presidency Small Cause Court—High Court, revisional jurisdiction of—Appeal from order of single Judge sitting on Original Side made in exercise of such jurisdiction—Nature of trial—"Judgment"—Civil Procedure Code (Act V of 1908), s. 115—Criminal Procedure Code (Act V of 1898), s. 195 (6)—Letters Patent (1865), cl. 15.* Sanction to prosecute the plaintiff in a civil suit in the Presidency Small Cause Court for making a false claim and for making a false statement in an application for leave to institute a suit was refused by a Judge of that Court. The defendant, thereupon, applied to the Original Side of the High Court for a reversal of the order and obtained an order of remand to the Small Cause Court Judge. The plaintiff having appealed against this order of remand:—*Held*, that the order appealed against was a "judgment" within the meaning of cl. 15 of the Letters Patent, and that there was a right of appeal. *The Justices of the Peace for Calcutta* v. *The Oriental Gas Company, 8 B. L. R. 433*, referred to. *Held*, also, that in every case where the Court is called upon to decide whether the decision under appeal is, or is not, a "judgment" within the meaning of cl. 15 of the Letters Patent, regard must be had to the nature and the contents of the order. *Ebrahim* v. *Fuckhrunnissa Begum, I. L. R. 4 Calc. 531, Hadjee Ismail Hadjee Hubbeeb* v. *Hadjee Mahomed Hadjee Joosub, 13 B. L. R. 91, Rama Aiyar* v. *Venkatachella Padayachi, I. L. R. 30 Mad. 311*, and *Mathura Sundari Dasi* v. *Haran Chandra Saha, I. L. R. 43 Calc. 857*, referred to. BUDHU LAL *v.* CHATTU GOPE (1916) . . . **I. L. R. 44 Calc. 804**

APPEAL TO PRIVY COUNCIL.

———— *Value of property, whether at date of institution of suit, or final decree—Whether plaintiff debarred from proving real value of property—Civil Procedure Code (Act V of 1908), s. 110.* The point of time to be considered (as to the value of the property) under the second paragraph of s. 110 of the Code of Civil Procedure, is the date of the judgment or final order under appeal to the Privy Council. *Allan* v. *Pratt, L. R. 13 A. C. 780, Macfarlane* v. *Leclaire, 15 Moo. P. C. C. 181, Mohideen* v. *Pitchey, [1893] A. C. 193, Dalgleish* v. *Damodar Narain, I. L. R. 33 Calc. 1286, Bank of New South Wales* v. *Owston, L. R. 4 A. C. 270, Gooroopersad* v. *Juggut Chunder, 8 Moo. I. A. 166, Moti Chand* v. *Ganga Pershad, I. L. R. 24 All. 174 ; L. R. 29 I. A. 40*, and *Nand Kishore Singh* v. *Ram Gulam Sahu, I. L. R. 39 Calc. 1037*, referred to. The question whether a tenancy is to be regarded as one at will, or one of a permanent nature, is a matter in which a substantial question of law is involved. *Maharam* v. *Telamuddin, 15 C. L. J. 220*, and *Raja Mukund Deb* v. *Gopi Nath Sahu, 21 C. L. J. 45*, referred to. Where the plaintiff brought his suit in the Munsif's Court, and paid court-fees on the annual rental of Rs. 4-4, he is not debarred from subsequently raising the point that the property in dispute was in fact of the value of Rs. 11,400. SURENDRA NATH ROY *v.* DWARKA NATH CHAKRAVARTI (1916).

I. L. R. 44 Calc. 119

APPELLATE COURT.

———— leave to withdraw suit by—

See JURISDICTION.

I. L. R. 44 Calc. 367

———— power of—

See REMAND . **I. L. R. 44 Calc. 929**

———— power of, to allow the withdrawal of a suit—

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 107 (2) AND O. XXIII, R. 1.

I. L. R. 40 Mad. 259

ARBITRATION.

See CIVIL PROCEDURE CODE (1908), SCH. II, PARAS. 16, 21 ; O. XXIII, R. 3.

I. L. R. 39 All. 401, 489

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), SS. 203 TO 207.

I. L. R. 39 All. 711

1. ———— *Arbitrator giving evidence before colleagues, if improper—Application for reference to arbitration containing provision as to opinion of majority prevailing but reference to arbitration silent on the point—Award of majority, if bad, on this ground—Award made in the absence of party who withdrew from the arbitration, if bad.* A suit was referred to the arbitration of three persons, two of whom were witnesses in the case, one for the plaintiff and one for the defendant. The former of these gave evidence before the two other arbitrators at the instance of the plaintiff. Thereafter the defendant objected to the arbitration going on and intimated that he would not call any evidence before the arbitrators who concluded the arbitration and gave an award, two for the plaintiff and one for the defendant. The application for reference to arbitration contained a provision that the opinion of the majority would prevail but the reference to arbitration did not provide for it. *Held*, that there was no impropriety on the part of the arbitrator who gave evidence before his colleagues. That the application for reference to arbitration having provided that the opinion of the majority would prevail, the award was not bad because of the absence of any such provision in the reference to arbitration. That the defendant having refused to call any evidence before the arbitrators, they were justified in continuing the hearing and giving their award in the absence of the defendant. HARIDAS DUTTA *v.* BAIDYANATH GHOSH (1917) . . . **21 C. W. N. 895**

2. ———— *Civil Procedure Code (Act V of 1908), Sch. II, cls. 1 and 15—Award, when all parties interested did not agree to order of reference, validity of—Partners, some not appearing in a suit against members of the firm, if interested parties—Court, jurisdiction of, to set aside award, when reference invalid—Award, if evidence of a separate agreement between the parties who agreed to the reference.* Where in a suit against the members of a partnership an order was made under cl. 1, Sch. II of the Civil Procedure Code, 1908, referring all the matters in difference between the parties to the suit to arbitration with the consent of all the parties, with the exception of two of the defendants who did not enter appearance, and an award was made thereon:—*Held*, that the order of reference was invalid not only against the parties who did not agree to the order of reference, but also against those who had agreed and the award must be set

ARBITRATION—*concl l*

aside. SETH DOOLY CHAND *v.* MAMUJI MUSAJI (1916) . . . . . 21 C. W. N. 387

ARBITRATORS.

———— **power of**—

See CONTRACT ACT (IX OF 1872), ss. 1, 118 . . I. L. R. 41 Bom. 518

ARMS ACT (XI OF 1878).

———— **s. 19, cl.** (*b*)—*Gun found in room equally accessible to several persons, if to be considered as in the possession of any one of them* A gun was found in an abandoned room of the house belonging to the accused in which the accused who were members of a joint family and others resided It appeared from the evidence that the room was accessible from outside The accused were convicted under s 19 (*b*) of the Indian Arms Act *Held*, that if the place in which an article is found is one to which several persons have equal right of access it cannot be said to be in the possession of any one of them, and the conviction of the accused could not be sustained *Jogjiban Ghose* v. *The King Emperor, 13 C W N. 861,* followed SUDHANYA BAWALI *v.* KING-EMPEROR (1916)
21 C. W. N. 839

ARREST.

See HABEAS CORPUS
I. L. R. 44 Calc. 76

———— **warrant to**—

See HABEAS CORPUS
I. L. R. 44 Calc. 459

ARTIFICIAL CHANNEL.

See MADRAS IRRIGATION CESS
L. R. 44 I. A. 166

ASCETIC.

———— **sudra, inheritance by**—.

See HINDU LAW—ADOPTION
I. L. R. 40 Mad. 846

ASSAM LAND REVENUE REGULATION (I OF 1886)—

———— **ss. 63, 67, 85**—

See SALE FOR ARREARS OF REVENUE
I. L. R. 44 Calc. 412

ASSAULT.

See RAILWAY PASSENGER
I. L. R. 44 Calc. 279

ASSESSED LAND.

———— **suit for land and trees, valuation of**—

See COURT FEES ACT (VII OF 1870), s. 7, CL (V), (B) AND (C)
I. L. R. 40 Mad. 824

ASSESSMENT.

See COMPENSATION.
I. L. R. 44 Calc. 87

See INAMDAR . I. L. R. 41 Bom. 159

ASSIGNEE.

———— **addition of, as plaintiff**—

See LIMITATION ACT (XV OF 1877), s 22
I. L. R. 40 Mad. 722

———— **right of, to a charge**—

See INAMDAR . I. L. R. 40 Mad. 93

ASSIGNMENT OF JODI.

———— **by Government**—

See INAMDAR . I. L. R. 40 Mad. 93

ATTACHMENT.

See ATTACHMENT BEFORE JUDGMENT.

See CIVIL PROCEDURE CODE (1908), s 60
I. L. R. 39 All 308

See CIVIL PROCEDURE CODE (ACT V OF 1908), s 60 (*1*)
I. L. R. 40 Mad. 302

See CIVIL PROCEDURE CODE (ACT V OF 1908), s 60 (*c*)
I. L. R. 41 Bom. 475

See OCCUPANCY HOLDING
I. L. R. 44 Calc. 720

———— **by creditor**—

See INSOLVENCY
I. L. R. 44 Calc. 1016

———— **of mortgaged property**—

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), ss 278, 282, 283, 287.
I. L. R. 41 Bom. 64

———— *Alienation by judgment debtor alleged to be pending the attachment and a fraudulent transfer to a creditor other than decree-holder—Transfer of Property Act (IV of 1882), s 53—Judgment debtor preferring one creditor before others—Civil Procedure Code, 1882, ss 240, 276, 295—Contest between private alienee and decree-holder—Continuance of attachment* The question in this case was which of two titles to the property *in suit was to be preferred, that of the appellant* under two deeds of sale executed in her favour on 15th July, 1907, by the judgment debtor, or that of the respondent (decree holder) who purchased the property at an auction sale on 23rd August, 1907,

respondent was transferee of both decrees, which were sent to the District Court at Murshidabad for execution On 13th June, 1902, application was made for execution of the decree of 1896, and the proceedings became execution case 8 of 1902; and the execution of the decree of 1901 commenced as above as execution case 16 of 1907. *Held* by the Judicial Committee (reversing the decision of the High Court), that on the evidence, and under the circumstances, of the case the appellant (plaintiff) had the better title The deeds in her favour were not antedated as alleged, and there was no fraudulent transfer to her within the meaning of s. 53 of the Transfer of Property Act (IV of 1882). The preferring of one creditor to another by the judgment debtor did not make the transfer a fraudulent one A debtor, for all that is contained in s. 53, may pay his debts in any order he pleases, and may prefer any creditor he chooses. Nor was

the attachement in the execution case 16 of 1907, and that alone was the attachment the continuance of which could avoid the appellant's private alienation; but on the facts it did not do The

ATTACHMENT—*concld.*

respondent could not invoke the attachment in execution case 8 of 1902 to defeat the alienation to the appellant which was made in different execution proceedings. Nor could he with its aid rely on s. 295 of the Civil Procedure Code, 1882, as entitling him to the benefit of s. 276. There were no assets in Court which was essential if s. 295 were invoked, and the only attachment within the meaning of s. 276 was that in execution case 16 of 1907 which he could not employ against the appellant. *Sorabji Edulji Warden* v. *Gobind Ramji, I. L. R. 16 Bom. 91,* referred to. MINA KUMARI BIBI *v.* BIJOY SINGH DUDHURIA (1916).

I. L. R. 44 Calc. 662

ATTACHMENT AND SALE.

——— **of moveables—**

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 11 . **I. L. R. 40 Mad. 733**

ATTACHMENT BEFORE JUDGMENT.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXXVIII, R. 5, SS. 115, 145.

I. L. R. 41 Bom. 402

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 52 . **I. L. R. 40 Mad. 955**

ATTESTATION.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 59 . **I. L. R. 41 Bom. 384**

ATTORNEY'S LIEN.

——— *Attorney, if may claim lien on his client's (plaintiff's) decree as against defendant's prior decree against plaintiff—Equities between attorney, client, and others interested in property.* The defendants had obtained a decree against the plaintiffs in a prior suit for Rs.1,451-9-0, including costs, and the plaintiffs in a subsequent suit obtained a decree for Rs. 1,431-8-0 and thereupon the defendants applied that the satisfaction of the plaintiffs' decree might be entered but the attorney of the plaintiffs made an application claiming a lien on the decretal amount of his client. *Held,* that the attorney could not claim any lien on the decree obtained by his client in preference to the claim of the defendants in respect of their prior decree. An attorney's lien is subject to all the equities between the client and the parties interested in the property. Meaning of attorney's lien discussed. *In the matter of* RASIK LAL MULLIK (1916) . . . **21 C. W. N. 106**

AURASA SON.

See HINDU LAW—PARTITION.

I. L. R. 40 Mad. 632

AWARD.

See CIVIL PROCEDURE CODE (1908), SCH. II, PARAS. 15, 16.

I. L. R. 39 All. 489

See CIVIL PROCEDURE CODE (1908), SCH. II, PARAS. 16, 21, O. XXIII, R 3.

I. L. R. 39 All. 401

B

BAIL.

——— **application for—**

See HABEAS CORPUS.

I. L. R. 44 Calc. 459

BANKRUPTCY.

——— *Straits Settlements Bankruptcy Ordinance—Debt contracted by a Hindu in Singapore—Adjudication of bankruptcy and discharge by the Singapore Court operating to discharge debt—Non-maintainability of a suit in India for the balance of the debt against the bankrupt or his undivided son—Liability of an undivided Hindu son, not a joint liability.* A Hindu who was domiciled in India, but who carried on trade in Singapore, was adjudicated a bankrupt by the Supreme Court at Singapore for debts incurred at Singapore and he eventually obtained at Singapore an order of discharge under the Straits Settlements Bankruptcy Ordinance. The plaintiff who, as one of the creditors, proved his debt and received two of the dividends due to him, was a party to the order of discharge. Under the above Ordinance a discharge operated as an extinguishment of the debt: *Held,* that the extinguishment of the debt by the Bankruptcy Laws of Singapore operated as a discharge of it everywhere and the creditor had no right to sue in India the debtor and his undivided sons for the balance of the debt as if it was still subsisting. Under the Hindu Law a Hindu son is not "jointly bound" with his father to pay the debts contracted by the father. Hence the said Ordinance under which a discharge of a bankrupt does not discharge a person "jointly bound" with him does not affect the undivided son. NARAYANAN *v.* VEERAPPA (1916).

I. L. R. 40 Mad. 581

BANKRUPTCY ACT (46 & 47 VICT., C. 52 OF 1883).

——— **s. 102—**

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), SS. 7, 36 AND 90.

I. L. R. 40 Mad. 810

BARGA KABULIYAT.

——— *Agreement to pay rent in kind mentioning equivalent amount in money in case of default—Landlord, if can claim current value of stipulated quantity of produce—Evidence Act (I of 1872), s. 92—Admissibility of oral evidence to modify significance of terms in kabuliyat.* The defendant had executed a *kabuliyat* in favour of the plaintiff, which was headed as a "*barga kabuliyat*", and in the body of the *kabuliyat* he agreed that if he failed to deliver half the crops he would pay Rs. 25 yearly. The plaintiff sued for *barga* rents claiming price of half the produce; defendant pleaded that the plaintiff was entitled to only Rs. 25 yearly according to the *kabuliyat*: *Held,* on a construction of the *kabuliyat,* that if the tenant made default in giving half the crops the landlord is entitled to recover only the fixed sum of Rs. 25 mentioned in the *kabuliyat,* and that under s. 92 of the Evidence Act, oral evidence is not admissible to show that the sum of Rs. 25 was mentioned in the *kabuliyat* for purposes of registration only. BASIRUDDIN CHOWDHURY *v.* AFSARUNESSA BIBI (1916) . **21 C. W. N. 860**

BARRISTER.

See COUNSEL, DUTIES OF

I. L. R. 44 Calc. 741

——— *Counsel receiving instructions direct from client—Non-return of fees for professional work not performed—Usage and etiquette of the profession—Duties of counsel—Nomination of juniors by seniors and of seniors by juniors, practice*

BARRISTER—*concld*

of—Practice The usage of the profession of a barrister that counsel should take his instructions only from an attorney in respect of any professional work on the Original Side of the High Court is a most beneficial one from the point of view of the public and the Bar and, though founded upon no rule of law, ought to be maintained In a certain suit, counsel accepted a brief containing instructions for him to appear at the trial on behalf of a party and was paid the consultation fee and the fee for attending the trial which were marked thereon Counsel attended the consultation and subsequently left Calcutta to attend to an urgent professional call, having previously returned the brief to the attorney, but not the fees *Held*, that counsel should have returned the whole fee (both for consultation and for attending the trial) It was given to him for the purpose of attending the trial, and the consultation was held with a view to his so doing The practice for seniors to name their juniors, or for juniors to nominate their seniors, is contrary to the traditions of the profession and to its best interests, and such a practice ought to be discouraged It is, however, quite legitimate for a senior to ask a junior to hold a brief for him when he is temporarily unable to attend to a case *In re* AN ADVOCATE (1917) **I. L. R. 44 Calc. 741**

BENAMI PURCHASE.

See SALE FOR ARREARS OF REVENUE
I. L. R. 44 Calc. 573

1. ——————— *Benami purchase, allegation of—Proof—Subsequent conduct—Sur*

Subsequent conduct of the parties affords valuable evidence as to whether the person in whose name a conveyance is taken is intended to be the beneficial owner or a mere *benamidar* In cases of alleged *benami* purchaser, the decision of the Court ought not to be rested on mere suspicion Reliance in such a case must be largely placed not only upon the surrounding circumstances and the position of the parties and their relation to one another, but also upon the motives which could govern their actions and their subsequent conduct Previous statements unless used to contradict or discount the evidence of a witness given in the suit, cannot be legitimately used, and even then the particular matter or point must be placed before the witness as one for explanation in view of its discrepancy with the evidence tendered The principle that the effect of the appointment of a debtor to the office of the executor is that the debt due from the debtor executor is considered to have been paid to him by himself and that the executor is accountable for the amount of his debt a[illegible]
alleged loan
subsequently
and the loar
latter date a[illegible]
the debt wa[illegible]
principle that the grant of probate operates retrospectively from the date of the death of the testator did not apply here where there was an intermediate executor who created the debt for which the executor who followed him was sought to be made liable as debtor. In a suit for the

BENAMI PURCHASE—*concld*

construction [illegible]
of the estate
the absence
a departure,
estate UPENDRO NATH NAG *v.* PURENDRO NATH NAG (1915) . . **21 C. W. N. 280**

2. ——————— *Purchaser at a benami sale depositing putni rent, before sale set aside, from money belonging to his beneficiary—Suit to recover, if lies* Defendant No 7 made a *benami* purchase at an auction sale of property belonging to defendants Nos 1 to 7 in the name of plaintiff. The sale was subsequently set aside, but before that date the plaintiff deposited a sum of money in order to save the property from a sale under the Putni Regulation In a suit by plaintiff the money so deposited was found to have been defendant No 7's Defendant No 7, however, made no claim to it *Held*, that the plaintiff was entitled to recover the amount deposited. SATYA CHARAN MUKHERJI *v.* DINANATH BISWAS (1916) . . . . . **21 C. W. N. 1130**

BENEFIT.

——————— **to donor's family**—

See MAHOMEDAN LAW—WAKF
L. R. 44 I. A. 21

BENGAL ACTS.

——————— **1865—VIII.**

See RENT RECOVERY (UNDER-TENURES) ACT

——————— **1870—VI.**

See VILLAGE CHAUKIDARI ACT

——————— **1879—IX.**

See COURT OF WARDS ACT

——————— **1884—III.**

See BENGAL MUNICIPAL ACT

——————— **1899—III.**

See CALCUTTA MUNICIPAL ACT.

——————— **1907—II.**

See EASTERN BENGAL AND ASSAM DISORDERLY HOUSES ACT.

——————— **1911—V.**

See CALCUTTA IMPROVEMENT ACT

BENGAL MUNICIPAL ACT (BENG. III OF 1884).

——————— **s. 61**—*Sale of holding, when owner unknown, for arrears of rates—Purchaser's title, if superior to mortgagee's* The purchaser of a holding sold under s 361 of the Bengal Municipal Act does not acquire it free from incumbrances, there

——————— **s. 155**—*The two mile limit within which private ferry boats may not ply, if a radius of two miles from Municipal ferry or two miles along the bank—Reference to another Statute when provision not ambiguous—Construction of Statute—Interpretation of penal provision* The distance of two miles above and below the Municipal ferry within which private persons are prohibited from

BENGAL MUNICIPAL ACT (BENG. III OF 1884)—*contd.*

———— s. 155—*contd.*

keeping a ferry-boat for the purpose of plying for hire without leave by s. 155 of the Bengal Municipal Act means distance along the banks of the river. The section cannot be construed in the light of the provisions of s. 16 of the Public Ferries Act, having regard specially to s. 4 of that Act. *Per* Richardson, *J.*—To come within the prohibition of that section the *terminus a quo* and the *terminus ad quem* of the unlicensed boat must both be within the prescribed area. Kasim Ali *v.* Chairman of the Municipal Commissioners of Chittagong (1916) . **21 C. W. N. 601**

———— ss. 178, 179—*Procedure preliminary to prosecution—s. 218.* The accused was served with a notice by the Municipality requiring him to remove a fence which was said to be an obstruction. The accused preferred an objection, whereupon the Chairman passed an order to move the District Magistrate for the prosecution of the accused. He was then tried and convicted under s. 218: *Held*, that there was a compliance with ss. 175, 176 of the Act but not with ss. 178, 179. There being thus a failure to observe the essential preliminary steps before an application could be made to the Magistrate under s. 202 the proceedings were without jurisdiction. Nobin Chandra Aich *v.* Noakhali Municipality (1916) .. . **21 C. W. N. 470**

BENGAL REGULATION (I OF 1793).

———— s. 8, cl. (4)—

See Chaukidari Chakaran Lands. **I. L. R. 44 Calc. 841**

BENGAL TENANCY ACT (VIII OF 1885).

———— s. 5—*Tenure-holder or raiyat—Reclamation lease if necessarily raiyati lease—"Raiyat" used loosely for all tenants—"Korfa" if means "under-raiyat only"—Suit to establish plaintiff's status as raiyat—Under-tenant if necessary party.* Casual mention of the tenants as 'raiyats' in judgments in suits in which no issue had been framed or question raised as to the status of the tenants cannot be regarded as the recognition by Courts of the tenants' status as raiyats. The word "raiyat" is sometimes used in official documents to mean tenants in general. A "korfa" tenant is not necessarily an under-tenant of a raiyat. He is a sub-lessee, whether of a *talukdar* or of a raiyat. The reservation by the *chakdars* of certain portions of the land for their own cultivation did not militate against the conclusion that they were tenure-holders. The definition of "tenure-holder" in s. 5 (1) of the Bengal Tenancy Act merely formulates the pre-existing law and the insertion of the words "bringing it (the land) under cultivation by establishing tenants in it" introduced no change in the law. The section subject to s. 195 applies to tenancies created before, as well as after, the Bengal Tenancy Act. In a suit to establish the status of the plaintiffs as raiyats the under-tenants are proper, but not necessary, parties. Reclamation lease if necessarily raiyati lease, considered. Secretary of State for India *v.* Jadav Chandra Misra (1916) . . . . **21 C. W. N. 452**

———— s. 5, cl. (5)—*Its effect—Presumption applicable to a tenancy existing before the commencement of the Bengal Tenancy Act.* Cl. (5) of s. 5 does not create any new rights or purport to affect any right created before the commencement of the Bengal Tenancy Act. It simply furnishes a mode of proof of the character of tenancies of certain descriptions. If the area held by a tenant exceeds 100 standard bighas, and a question arises as to the status of such a tenant, the Legislature lays down that the tenancy is to be presumed to be that of a tenure-holder, but the presumption thus raised is rebuttable. The clause is, consequently, a provision not of substantive, but of adjective, law. It lays down a presumption and changes the burden of proof. Whereas in the absence of the presumption the party who affirmed that the tenancy was of particular description would have to give evidence in support of his contention; the presumption, where it applies, relieves the party relying thereon from the obligation to furnish such proof in the first instance. There is no valid reason why the presumption should not be applied to a tenancy which existed before the commencement of the Bengal Tenancy Act. The presumption embodied in s. 5, clause (5) does not incorporate a novel principle into our law but merely codifies what had been a recognized doctrine under the old law. The only difference caused by the adoption of the presumption is that we have now a definite rule of evidence, a crystallized mode of proof. *Dhanput Singh v. Gooman Singh, (1864), W. R. Gap., Act X, 61, Gopee Mohun v. Sibchunder, 1 W. R. 68, Sarat Chandra v. Ratubuddin, 16 C. L. J. 271, Cogdell v. Railway Co., 132 N. C. 852,* followed. The fact that a tenancy had been sub-divided into two tenancies before the Bengal Tenancy Act would not prevent the application of sub-s. (5) of s. 5 in determining the character of the tenancy. The tenure was divisible, and the fact of sub-division was not a breach of its continuity. Each fragment carved out of the original tenure retained its incident. *Adit v. Sukhraj, 17 C. L. J. 435, Chandra Kanta v. Ram Krishna, 20 C. W. N. 1002,* followed. Proof of the purpose of the original grant determines the real nature of the tenancy. *Durga v. Kalidas, 9 C. L. R. 449, Promotho Nath Kumar v. Nilmoni Kumar, 14 C. L. J. 38, Promoda Nath Roy v. Asir-uddin Mandal, 15 C. W. N. 896,* followed. *Mahabir v. Fox, 9 C. L. J. 467, Buzlul Karim v. Satish Chandra, 13 C. L. J. 418, Nityananda v. Nanda Kumar, 13 C. L. J. 415, In re School Board Election for Parish of Pulborough [1894], 1 Q. B. 725, In re Athlumney [1898], 2 Q. B. 547, Main v. Stark, 15 App. Cas. 384, Reynolds v. Attorney-General [1896], A. C. 240, Bengal Indigo Company v. Roghobur Das, I. L. R. 24 Calc. 272,* referred to. *Maharam Chaprasi v. Telam-ud-din Khan, 15 C. L. J. 220,* distinguished. Jagabandhu Shaha *v.* Magnamoyi Dassee (1916). **I. L. R. 44 Calc. 555**

———— ss. 5 (1), (2), (5), 19—*Lease before the Act—Land partly cultivated by tenant, if necessarily raiyati—Reclaiming lease, land taken to be cultivated by settling tenants area exceeding 100 bighas—Evidence of conduct if admissible when lease unambiguous—Tenant recorded "raiyat" without contest* S. 5 (5) of the Bengal Tenancy

BENGAL TENANCY ACT (VIII OF 1885)— *contd*

——— **s. 5**—*concld*

Act applies to tenancies created before the Act. The Bengal Tenancy Act which was intended to regulate the relations of the various classes of the agricultural community, applies and was intended to apply to tenancies in respect of agricultural land whether created before or after the passing of the Act. Where a *prajagiri* settlement was made of land in area far in excess of what is usually held by a raiyat, and the full rent was payable after a period—a term which usually finds place in leases of tenures. *Held*, that the word "*praja*" means a tenant—and the presumption that the lease was a tenure applied and was not negatived by the fact that by the terms of the lease the lessee undertook to reclaim jungle "in the hope of acquiring a *jungleburi* right in future" and was to "continue to hold and enjoy the lands from heirs to heirs by bringing the land under cultivation by settling tenants". The definition of a tenure as contained in the Bengal Tenancy Act (s 5, sub s *1*) introduced no new law, and in any case the Act applies to a tenancy created before the passing of the Act. *Held*, that the language of the lease being consistent only with the interest granted thereby being a tenure, evidence of the subsequent conduct of the parties was inadmissible. The rule is that evidence may be given to explain but not to contradict documents the meaning of which is doubtful and such evidence may consist of proof of the mode in which property has been held and enjoyed thereunder. But where the meaning of the words in the document is unambiguous the subsequent acts of the parties are not admissible to construe it whether the document be ancient or modern. Where in a proceeding under Reg VII of 1822 held in 1877 it was clear that there was no dispute as to the status of the tenant within s 14 and no official proceedings were incorporated in the *rubekari* of settlement, the mere fact that the tenant was recorded as a raiyat does not preclude the [illegible] as such, the sharp [illegible] uyats and SECRET- [illegible] PRASHAD BARIK (1916) . . . **21 C. W. N. 505**

——— **s. 18**—*Raiyat holding at fixed rate, if can cut and appropriate trees—Trees—Presumption under s 50 as to fixity of rent, if applicable in a Small Cause Court suit—Status of tenant, if can be determined in such suit.* A raiyat holding at a fixed rate of rent has the right to cut and appropriate trees. RADHIKA NATH RAY *v* SAMIR FAKIR (1917) . . . **21 C. W. N. 636**

——— **s. 19**—Section19 of the Bengal Tenancy *Act can refer only to persons who, being* raiyats within the definition to be found in s 5, had acquired a right of occupancy prior to the passing of the Act. SECRETARY OF STATE *v* GOVIND PRASHAD BARIK . (1916) **21 C W.N. 505**

——— **s. 45**—

SCH III, CL. 1 (*a*)—

See NON OCCUPANCY RAIYAT

I. L. R. 44 Calc. 267

BENGAL TENANCY ACT (VIII OF 1885)— *contd*

——— **s. 49, cl. (b)—**

See OCCUPANCY HOLDING

I. L. R. 44 Calc. 272

——— **ss. 67, 179**—*Permanent mokurari lease—Stipulation to pay interest on arrears of rent "at 75 per cent with full damages", if by way of penalty—Contract Act (IX of 1872), s 74—Mere high rate, if sufficient to demand interference—Facts and circumstances to be proved—Position of tenant under permanent lease and a debtor compared—Onus of proof.* Per N R CHATTERJEA, *J*—S 179 of the Bengal Tenancy Act does not exclude the consideration of the question whether a stipulation in a permanent *mokurari* lease to pay interest at a higher rate than that provided by s 67 is affected by provisions of law other than the Bengal Tenancy Act, and although Courts should not lightly interfere with contracts between landlords and tenants in cases of permanent *mokurari* leases, a stipulation for payment of interest on arrears of rent at rate which is unconscionable should not be allowed to be enforced even in such cases. No hard and fast rule can be laid down as to what is unconscionable and exorbitant, which must be determined with regard to the facts of each case. Interest represents compensation for the detention of the rent and a stipulation in a *mokurari* lease to pay "75 per cent interest plus full damages" appears rather to have been intended as an effective means of securing punctual performance of the contract than represent the damages which the landlord was to suffer by reason of non payment of the rent. *Per* RICHARDSON, *J*—The lessee of a permanent lease at an invariable rent is not *prima facie* entitled to the indulgent consideration which might be extended to a needy and improvident debtor in the clutches of a grasping money-lender, and though it may be that the provisions of s 179 of the Bengal Tenancy Act must be read subject to the power of the Court to intervene under the Contract Act, they cannot be overlooked or left out of account. Stipulation to pay interest at a high rate may be proved to be one by way of penalty, but to justify an inference that it is so, it is not enough to show that it was a hard bargain. In general, evidence of facts and circumstances outside the contract is necessary to justify the Court's interference. The onus to prove such circumstances is on the lessee. NABO KUMAR CHUCKERBUTTY *v* SYED ABDUL JUBBER MIYAN (1916)

21 C. W. N. 112

——— **ss 74, 179**—*Written lease—A definite amount over and above amount stated as rent, but forming part of consideration, if abwab—High rate of interest and damages in mokurari lease, if penalty—Contract Act (IX of 1872), s 74.* The question whether any particular item is or is not an *abwab* must depend upon the construction of the contract of lease in each case, and the question in each case is whether the sum claimed is really part of the rent agreed upon to be paid as consideration for the lease. The question whether in a case where there is a written engagement, specified sum which is neither indefinite nor arbitrary and which is agreed upon to be paid as part of the rent in the lease creating the tenancy, can be recovered, was not

GAL TENANCY ACT (VIII OF 1885)—
ntd.

——— s. 74, 79—*concld.*

erred to the Full Bench in *Radha Prosad Singh* *Bal Kower Koeri, I. L. R. 17 Calc. 726.* A pulation in a *kabuliyat* creating a *mokurari* nse to pay interest at 75 per cent on arrears f rent and damages at 300 per cent is intended o secure punctual payment of rent rather than epresent the loss to which the landlord is put for the non-payment of the rent. Being by way of penalty such a stipulation comes under s. 74 of the Contract Act, and is also unconscionable. UPENDRA LAL GUPTA *v.* MEHERAJ BIBI (1916). **21 C. W. N. 108**

——— **s. 85 (*1*), construction of—**

See TITLE . . **I. L. R. 44 Calc. 771**

——— **s. 93**—*Common manager, appointment of—Dispute amongst some co-sharers as to their shares—"Estate", meaning of—Opening of separate accounts, if bars appointment of manager to whole estate.* A dispute between some of the co-owners of an estate as to the management of their share is sufficient for the appointment of a common manager of the estate under s. 93 of the Bengal Tenancy Act. A dispute as to the terms on which, or the person with whom, a particular holding or a number of holdings should be settled, is a dispute as to the management of the estate though only a part of the estate is involved. A dispute as to the boundaries between the common estate of the co-owners and another contiguous estate of which one of the co-owners of the common estate is the sole proprietor, is not a bar to the appointment of a common manager when there are other disputes between the co-owners. An estate remains a single estate for revenue purposes though separate accounts may have been opened in respect of it. SARADINDU RAY *v.* GRISH MOHINI DEBI (1916) . **21 C. W. N. 240**

——— **s. 95—**

See COMMON MANAGER

I. L. R. 44 Calc. 800

——— **s. 104H**—*Suit under.* In a suit under s. 104H of the Act by tenants who had been recorded as tenure-holders to have themselves recorded as raiyats, the Court cannot disturb the rent settled unless the plaintiffs succeed in showing under s. 104H (*3*), (*e*), that in the record-of-rights their status has been wrongly recorded. SECRETARY OF STATE *v.* GOVIND PRASHAD BARIK (1916) . **21 C. W. N. 505**

——— **s. 105A, cl. (*c*)**—*Record-of-rights—Dispute as to correctness of entry—Settlement of fair rent, application for, by landlord—Issue raised under cl. (e) of s. 105A as to whether tenant is raiyat or tenure-holder, if can be tried in absence of under-raiyat—Non-joinder—Necessary party—Under-raiyat if necessary party—Additional rent, claim for, under the terms of a lease, if triable under ss. 105 and 105A.* Where in an application for settlement of fair and equitable rent under s. 105 of the Bengal Tenancy Act the landlord disputed the correctness of the entry of the tenants in the record-of-rights as tenure-holders and asserted that the tenants were raiyats and liable to pay rent as such, and an issue was raised upon this question but the Revenue Officer refused this issue on the ground that for that pur-... ants were necessary parties:

BENGAL TENANCY ACT (VIII OF 1885)—
contd.

——— **s. 105A, cl. (*c*)**—*concld.*

Held, that the issue raised was triable under the provisions of s. 105A, cl. (*e*), in the absence of the under-tenants. The under-tenants, if they had been joined as parties, would have been proper parties, but they were not necessary parties in the sense that the proceedings must fail in their absence. Where the landlord claimed rent not only under s. 52 of the Bengal Tenancy Act, but also on the ground that he was entitled, under the terms of the lease executed by the tenants, to rent for the whole area actually in the possession of the tenants: *Held*, that the question was triable under ss. 105 and 105A of the Bengal Tenancy Act. In settling a fair rent under s. 105, though cl. 4 says he is to have regard to the rules laid down in the Act, there is nothing to prevent a Revenue Officer and a Court from taking into consideration the terms and conditions embodied in a lease or other written document by which the rights of the parties are regulated. JOGENDRO MOHAN DAS *v.* JANAKINATH SAHA (1916) . **21 C. W. N. 427**

——— **s. 106**—*Suit under—Plaintiff, if may pray merely for a negative declaration that entry erroneous—Duty of Settlement Officer to record facts as at date of record-of-rights.* In a suit under s. 106 of the Bengal Tenancy Act the plaintiff is not entitled to a declaration that a specific entry in the record-of-rights is not correct as it stands, he must go further and establish in what respect it is incorrect and how it should be amended; if he is unable to do this his suit must fail. It is the duty of the Settlement Officer to enter in the record-of-rights the rent payable at the time the record-of-rights is in course of preparation. When, therefore, it appears to him that the landlord has evicted the tenant from a portion of the land of his tenancy he is correct in showing that no rent is payable by the tenant to the landlord for the lands recorded as in his possession. DWIJENDRONATH RAY CHOWDHURY *v.* AFTABUDDI SARDAR (1916). **21 C. W. N. 492**

——— **s. 109**—*Its scope and operation.* To attract the operation of s. 109 of the Bengal Tenancy Act it is essential to establish that the civil suit has for its subject a matter which ha[s] already formed the subject of an applicatio[n] under s. 105. The introduction of s. 105A h[as] not altered the scope of s. 109 which must [be] construed on the same lines as before the int[ro]duction of s. 105A. It cannot be held un[der] s. 109 that a matter has been the subject of [an] application under s. 105 whenever it migh[t] the defendant had so chosen, have been ra[ised] and decided under s. 105 read with s. 105A. [To] hold that would be to read into s. 109 w[ords] which are not there. *Pandab Dowari* v. *A... Kisun, 14 C. W. N. 897, Shashi Bhusan* v. *E... Ali, 19 C. W. N. 636, Sasi Bhusan Hazra* v. *A... Kumar Samanta, 19 C. W. N. 637 (n),* r[eferred] to. NAWAB BAHADUR OF MURSHIDA[BAD v.] AHMAD HOSSEIN (1916) . **I. L. R. 44 Ca[lc.]**

——— **s. 111 A—**

See COURT-FEE.

I. L. R. 44 C...

——— **s. 111B**—*Suit brought withi[n pro]hibited period—Proper procedure—Rej...*

BENGAL TENANCY ACT (VIII OF 1885)— *contd*

———— **s. 111B**—*concld*

return of plaint at once—Civil Procedure Code (Act V of 1908), O VII, rr 10 and 11—Plaint kept in the file until expiry of three months—Suit if may be dismissed later on—Jurisdiction of the Court to proceed to try suit on the merits In view of the provision of s 111B of the Bengal Tenancy Act that a suit shall not be instituted in any Civil Court for the decision of certain issues within three months from the date of the certificate of final publication of the record of rights the proper course for the Court, when such a suit is brought within that period, is to reject the plaint under O VII, r 11, cl (*d*), of the Civil Procedure Code If, the defect being overlooked, the plaint is registered, the Court, on subsequently discovering it when the three months have expired, would not be justified in dismissing the suit As the section does not take away the Civil Court's jurisdiction altogether it should, in such a case, proceed to try the suit on the merits *Per* RICHARDSON, J —If a plaint presented during the prohibited period be not at once returned or rejected under O VII, r 10 or r 11 of the Civil Procedure Code (as the Legislature undoubtedly contemplates), and remains on the file of the Court, the suit may be treated, subject always to any question arising under s 109, as though the plaint had been received and the suit instituted on the day following the expiration of such period PRAN KRISHNA SHAHA *v* KRIPANATH CHOWDHURY (1916)
21 C. W. N. 209

———— **s. 113—**

1. ———————— *Stipulation for payment of additional rent on waste land becoming cultivated—Realization of the same* Where there is a stipulation between a landlord and his tenants that the *khila* lands included in the tenancy would be assessed with rent on becoming *hasila* the increase in the rental would accrue automatically on any portion of the waste becoming cultivated To such a process neither s 113 nor any other section of the Bengal Tenancy Act can operate as a legal bar The mere realization of the admitted rent for the years before suit does not preclude the landlord from recovering additional rent for the same period for such lands where there is nothing to show that the landlord received his dues and the tenants paid him, on the understanding that no further demand would be made MAKBUL ALI *v* JOGESH CHANDRA ROI (1910) . . . *21 C. W. N. 534*

2. ———————— *Application and scope of, if controlled by s 103B—Enhancement of rent settled under Chap X* S 113 of the Bengal Tenancy Act applies to rents settled under Chap X Where rent is finally settled under one or other of those provisions it cannot be enhanced except on grounds mentioned in the section within the period mentioned therein A consideration of Chap X as a whole shows that the effect of the plain language of s 113 is not in any way controlled or cut down by anything in s 103B MIYAJAN BHUIYAN *v* SRIMATI JOYMALA (1916) . . . . **21 C. W. N. 546**

———— **s. 155 (3)—**

See DECREE . **I. L. R. 44 Calc. 954**

BENGAL TENANCY ACT (VIII OF 1885)— *contd*

———— **s 160, cl. (*g*)**—*Protected interest—Sepatni created by darputnidar authorized in darputni lease to create such encumbrance if a protected interest—Separate document expressly giving permission executed at the time when encumbrance created if necessary—S 167* A *darputni* lease expressly stated that the *darputnidar* would have authority to grant a *sepatni* and pursuant to the power so conferred the *darputnidar* created a *sepatni* *Held*, that the lease contained an express permission in writing sufficient for the purpose of cl (*g*) of s 160, Bengal Tenancy Act, and the *sepatni* was a protected interest which could not be annulled under the provisions of s 167, Bengal Tenancy Act That s 160 (*g*) does not contemplate that the permission should be expressly given at the time of the creation of the encumbrance by a document especially executed in this behalf BIDHU MUKHI CHOWDHURANI *v* ASMATULLA (1916) . **21 C. W. N. 829**

———— **s. 161**—*Person acquiring title by adverse possession against sub tenant if an 'incumbrancer' and if entitled to notice* When a person has by adverse possession against a sub tenant acquired a statutory title to a portion of the lands comprised in the sub tenancy he has an interest in the sub tenancy so that when on a sale of the superior tenancy for arrears of rent the purchaser seeks to annul the sub tenancy as an "incumbrance" such person stands in the position of an incumbrancer and is entitled to notice under s 167 of the Bengal Tenancy Act BHUSAN CHANDRA GHOSH *v* SRIKANTA BANERJI (1916)
21 C. W. N. 155

———— **s. 167**—*Sale of an under tenure under —Effect of the sale, in case the landlord ceased to be the sole 'landlord' at the date of sale—If the sale passes the under tenure to the purchaser free of incumbrances—Effect of the cessation, partial or entire, of the interest of the landlord on his right to enforce realization of arrears of rent by sale of the tenancy —Propriety of applying isolated dicta from judicial precedents to cases where the facts are different in essential particulars* Plaintiff obtained in February 1908 a rent decree against an under tenure holder and applied for execution of the decree in accordance with the special procedure prescribed in Chap XIV of the Bengal Tenancy Act In January, 1909, one half share of the plaintiff's interest as superior landlord was sold in execution of a mortgage decree In February, 1909 the defaulting under tenure was sold in execution The defendants declined to deliver up possession to plaintiff purchaser on the allegation that they were in possession as holders of a subordinate under tenure lawfully created by the defaulter In 1911 plaintiff brought the present suit to eject the defendants, who pleaded that, the plaintiff having ceased to be the sole landlord at the date of the sale (February 1909), the sale was not one under the Bengal Tenancy Act, but only a sale of the right, title, and interest of the judgment debtor under the

took the necessary steps for the sale of the undertenure in conformity with statutory provisions, the effect of the execution sale was to pass the

BENGAL TENANCY ACT (VIII OF 1885)— *contd.*

——— s. 167—*concld.*

under-tenure to the purchaser even though the decree-holder had lost his interest as landlord before the actual sale. The legal effect of the sale depends upon the character of the proceedings in execution duly taken and not upon the relative situation of the parties at the moment of the sale: *Held*, further, that to apply isolated dicta from a judgment of the Judicial Committee to a case where the facts are in essential particulars different would be a manifest abuse of judicial precedents. SYEDUNNESSA KHATUN *v.* AMIRUDDI (1917) . . . . 21 C. W. N. 847

——— ss. 167, 173—*Sale of mokurari tenure for arrears of rent—Benamidar of purchaser, if can annul incumbrance under s. 167—Duty of Collector in such a case—Effect of s. 173—Specific Relief Act (I of 1877), s. 45—Application of the section by the High Court, when warranted.* A *mokurari* tenure was sold for arrears of rent and purchased in the name of the plaintiff who was proved to be the *benamidar* for one of the judgment-debtors. On the Collector refusing to issue notices under s. 167, Bengal Tenancy Act, for annulling incumbrances on the application of the plaintiff, he sued for a declaration that he had power to annul the incumbrances under s. 167 and that the Collector was bound to issue and cause notices to be served: *Held*, that this was not a case where the Courts should be asked to give equitable relief by directing a public servant to exercise his powers under s. 167, Bengal Tenancy Act, and the suit was rightly dismissed. That, even assuming that the Collector should have issued notice on the requisition of the person in whose name the sale certificate stood, the Court had to consider whether it would in equity be right to require him to do the specific act in question, seeing that thereby the law prohibiting purchase by the judgment-debtor would be defeated. MOHAMMED SIDDIQ *v.* BABU DURGA PROSHAD (1915) . . . . . 21 C. W. N. 342

——— Sch. III, Art. 3—

1. ——— *Landlord purchasing raiyati-holding at rent-sale and ousting tenant—Suit by tenant to recover—Limitation.* Where the landlord of a raiyati-holding caused it to be sold in execution of a rent-decree, purchased it, and settled it with new tenants, a suit by the former raiyat to recover the holding would be governed by Art. 3, Sch. III of the Bengal Tenancy Act. SATISH CHANDRA BOSU *v.* NITYA GOPAL HALDER (1917) . . . . . 21 C. W. N. 978

2. ——— *Limitation—Dispossession by purchaser at sale held at landlord's instance, if comes within article.* Dispossession by the purchaser, at a sale held at the instance of the landlord, is not dispossession by or at the instance of or in collusion with the landlord and the two years' rule of limitation is not applicable to a suit for recovery of possession in such a case. DURGAPADA PANJA *v.* BHUSAN CH. GHOSH (1916). 21 C. W. N. 373

3. ——— *Purchase of holding by landlord in execution and consequent dispossession of raiyat—Limitation.* Art. 3 of Sch. III to the Bengal Tenancy Act applies even when the tenant has been dispossessed by the landlord on the strength of a purchase of the holding in execution.

BENGAL TENANCY ACT (VIII OF 1885)— *concld.*

——— Sch. III, Art. 3—*concld.*

FANI BHUSHAN SARKAR *v.* PULIN CHANDRA MANDAL (1916) . . . . 21 C. W. N. 976

BEQUEST.

——— in connection with khairat—

See CUTCHI MEMONS.

I. L. R. 41 Bom. 181

BEQUEST TO DAUGHTER.

See HINDU LAW—JOINT FAMILY.

I. L. R. 40 Mad. 1122

BHAGCHASIS.

——— *Bhagchasis* are persons who cultivate land rendering a share of the produce to the landlord. They may or may not have an interest in the land, but are not "hired servants" as mentioned in s. 5 (2) of the Bengal Tenancy Act. The statement that "*bhagchasis*" who are elsewhere called "*bhagdars*", *burgadars*", "*bataidars*", or "*adhiars*" are in general mere labourers is contrary to experience and in this case contrary also to the presumption arising under s. 103B of the Act. SECRETARY OF STATE *v.* GOBINDO PRASHAD BARIK (1916).

21 C. W. N. 505

BHAGDARI PROPERTY.

See MAHOMEDAN LAW—WILL.

I. L. R. 41 Bom. 377

BICYCLE.

——— whether a vehicle—

See BOMBAY DISTRICT POLICE ACT (BOM. ACT IV OF 1890), s. 61, CL. (*b*).

I. L. R. 41 Bom. 464

BID.

——— leave to—

See MORTGAGOR AND MORTGAGEE.

I. L. R. 41 Bom. 357

BILL OF EXCHANGE.

——— *Drawer of the bill, an alien—Bill drawn against goods consigned from an enemy port by an enemy steamer—Shipping documents signed by an alien—Acceptance of the bill by a British subject—Acceptance unqualified and unconditional—War breaking out after acceptance—The enemy steamer arriving at Bombay before the outbreak of war but subsequently harbouring in a neutral port to evade capture without discharging cargo—The Royal Proclamation dated 5th August warning persons not to obtain goods from the German Empire—Bill dishonoured by non-payment on due date—Shipping documents tendered by the holder of the bill—Proclamation dated 12th December, 1914, authorizing British subjects to obtain goods from an enemy steamer in neutral port—The Negotiable Instruments Act (XXVI of 1881), ss. 32 and 43—Property in the goods rests in the acceptor, though the bill of lading remains with the holder of the bill of exchange to secure the price—Consideration does not fail if the acceptor is put in a position to take delivery of the goods.* The plaintiffs were a British bank carrying on business in London, Bombay, and elsewhere. The defendants were a firm of merchants, British subjects, carrying on business in Bombay. On the 24th June, 1914, one G. A., a German residing in Hamburg, drew a bill of

BILL OF EXCHANGE—*concld*

exchange upon the defendants in favour of the plaintiffs for £65 0 6 payable at thirty days' sight to the order of the plaintiffs—value received—which the drawees were to place to the account of the drawer as advised The bill purported to be drawn upon the defendants against 50 bales of goods per *S S Lichtenfels*, a German steamer The bill was presented to the defendants for acceptance with the shipping documents relating to the bales of goods mentioned in the bill and was accepted by them on 20th July 1914, payable at the office of the plaintiffs in Bombay The *S S Lichtenfels* reached Bombay just before the outbreak of war between Great Britain and Germany (i e, 4th August 1914), and in order to evade capture left Bombay and took shelter in the neutral port of Marmagoa The bill was presented for payment on the due date with the shipping documents for the 50 bales attached but was dishonoured by non payment On the 12th December, 1914, a Proclamation was issued by which all British subjects residing or carrying on business in British India were authorized to make

the amount due on the bill, contending that the defendant's acceptance was unqualified and absolute and that as the shipping documents for the goods mentioned in the bill of exchange were tendered at the time of presentation for payment, they were entitled to payment according to the terms of the bill and the acceptance The defendants contended that the acceptance was qualified subject to the condition that the defendants should be put in a position to get the delivery

Empire, the shipping documents ceased to be any consideration for the acceptance *Held*, (i) that in either view of the acceptance the plaintiffs were entitled to succeed, inasmuch as if the acceptance was unqualified the defendants were bound to pay on due date, and if the acceptance was qualified they were bound to pay "at or after maturity" when the money was demanded after the Proclamation of December, 1914 where

formance before it was too late of the condition alleged MOTISHAW & Co *v* THE MERCANTILE BANK OF INDIA (1916) . **I. L. R. 41 Bom. 566**

BILL OF LADING.

See CHARTER PARTY
I. L. R. 41 Bom. 119

BIRTH.

See SUCCESSION ACT (X OF 1865), ss 7, 9, 10 . **I. L. R. 41 Bom. 687**

BLINDNESS.

See HINDU LAW—PARTITION
L. R. 44 I. A. 229

BOMBAY ACTS

———— **1874—III.**

See HEREDITARY OFFICES ACT, BOMBAY

BOMBAY ACTS—*concld*

———— **1879—V.**

See LAND REVENUE CODE, BOMBAY.

———— **1879—XVII.**

See DEKKHAN AGRICULTURISTS' RELIEF ACT

———— **1881—XXI.**

See BROACH AND KAIRA INCUMBERED ESTATES ACT

———— **1887—IV.**

See BOMBAY PREVENTION OF GAMBLING ACT

———— **1888—III.**

See BOMBAY MUNICIPAL ACT

———— **1890—IV.**

See BOMBAY DISTRICT POLICE ACT

———— **1901—III**

See BOMBAY DISTRICT MUNICIPALITIES ACT

———— **1910—III.**

See HEREDITARY OFFICES (AMENDMENT) ACT

BOMBAY DISTRICT MUNICIPALITIES ACT (BOM. III OF 1901).

———— **s. 3, cl. (7)**—*Building, interpretation of—Wire fence is not a building* The term "building" as defined in s 3, cl (7) of the Bombay *District Municipalities Act, 1901*, does not include an ordinary wire fence EMPEROR *v* RANCHODLAL (1917) . **I. L. R. 41 Bom. 563**

BOMBAY DISTRICT POLICE ACT (BOM. IV OF 1890).

———— **s. 61, cl. (b)**—*Disregarding rule of the road—Driving a bicycle on a wrong side of the road—Vehicle—Bicycle* A bicycle is a vehicle within the meaning of the word as used in cl (b) of s 61 of the District Police Act (Bombay Act IV of 1890) EMPEROR *v* KIKABHAI (1917)
I. L. R. 41 Bom. 464

———— **ss. 63 (b), 80 (3)**—*Complaint against police officer for vexatiously seizing property—Limitation for the application* On the 2nd March, 1916, certain property was seized from the applicant by a police officer The applicant was tried by a Magistrate and acquitted, and the property was returned to him on the 30th Octo-

barred under s 80 (3) of the Act *Held*, that the application was not barred by s 80 (3), for the act complained of was the whole act of seizure by the police, which must be taken to have been a continuous act so long as the seizure by the police was maintained MADHAV GANPATPRASAD *v* MAJIDKHAN (1917) . **I. L. R. 41 Bom. 737**

BOMBAY MUNICIPAL ACT (BOM. III OF 1888).

———— **s. 289—**

See RAILWAYS ACT (IX OF 1890) s. 7.
I. L. R. 41 Bom. 291

BOMBAY MUNICIPAL ACT (BOM. III OF 1888)—*concld.*

——— s. 349B—*Height of* [illegible] *of bath-rooms at the top in the* [illegible] *—Raising the height.* The applicant was convicted of infringing the provisions of s. 349B of the City of Bombay Municipal Act (Bombay Act III of 1888) in that he added small bath-rooms to the third and fourth floors of his old residential house, though the additions fell below the original height of the house. The applicant having applied: *Held,* reversing the conviction, that the act of the accused fell outside the purview of s. 349B of the Act because he had neither erected nor raised his building within the meaning of the section. EMPEROR *v.* KALLIANJI (1917).
I. L. R. 41 Bom. 741

——— ss. 418, 461, cl. (*o*)—*Bye-law for weights and measures—Validity of the bye-law—Recognition of certain measures only for standardization—All measures in use should be recognized—Measures of phara and pyli—New measures of maplo and mapli.* The Municipal Corporation of the City of Bombay framed the following bye-law under the powers vested in them by s. 461, cl. (*o*) of the City of Bombay Municipal Act (Bom. Act III of 1888):—" No tenant or occupier of a shop, stall, or godown or standing in a private market shall keep at such shop, stall, godown, or standing any weight or measure which has not been duly verified by comparison with the standard weight or measure and stamped in accordance with the provisions of ss. 418 and 419 of the Act" *Held,* that the bye-law was invalid under the Municipal Act in so far as it prohibited the keeping, for use in a private market, of a measure which had been in use in the City but of which no standard had been kept by the Commisssioner as required by s. 418 of the Act. *In re* JIVRAJ DHANJI (1917) . . **I. L. R. 41 Bom. 580**

BOMBAY PREVENTION OF GAMBLING ACT (BOM. IV OF 1887).

——— s. 12—*Gambling in the courtyard of a mosque—Sentence.* The accused who were peons and mill-hands betook themselves on a hot afternoon to the cool shades of a musjid where they amused themselves by playing cards for very insignificant stakes. They were convicted for an offence under s. 12 of the Bombay Prevention of Gambling Act, 1887, and sentenced to undergo simple imprisonment for fifteen days: *Held,* that the sentence passed was, under the circumstances, out of proportion to the criminality of the acts charged; and that a sentence of small fine would have been adequate. EMPEROR *v.* MAHOMED NATHU (1916) . . **I. L. R. 41 Bom. 149**

BOMBAY REVENUE JURISDICTION ACT (BOM. X OF 1876).

——— s. 4—

See SARANJAM . **I. L. R. 41 Bom. 408**

BONA FIDE CLAIM.

See THEFT . **I. L. R. 44 Calc. 66**

BOND.

——— *Alteration in good faith, consonant to original intention of the parties—Instrument, whether vitiated thereby.* Where a mortgage was in terms one rupee per mensem on a loan of Rs. 200, and the mortgagee inserted the words "per cent" in the bond while in his possession, thus altering the interest from eight annas per cent per mensem to one rupee per cent per mensem; and it was found that there had been no fraud; and that it was the common intention of the parties that interest was to be paid at the rate of one rupee per cent: *Held,* that an alteration made in good faith to carry out the original intention of the parties does not vitiate the instrument. ANANDA MOHAN SHAHA *v.* ANANDA CHANDRA NAHA (1916).
I. L. R. 44 Calc. 154

BREACH OF CONTRACT.

——— of marriage—

See DAMAGES . **I. L. R. 41 Bom. 137**

BRITISH BALUCHISTAN REGULATION (IX OF 1896).

——— s. 10—

See ESTOPPEL . **L. R. 44 I. A. 213**

BROACH AND KAIRA INCUMBERED ESTATES ACT (BOM. XXI OF 1881).

——— s. 28—*Indian Contract Act (IX of 1872), s. 65—Talukdar, mortgage by—Validity of mortgage during Talukdar's lifetime—Mortgage void on Talukdar's death—Mortgagee not entitled to compensation for discharge of mortgage.* A mortgage effected by a talukdar being void beyond the natural life of the mortgagor-talukdar under s. 28 of the Broach and Kaira Incumbered Estates Act (XXI of 1881), the mortgagee is not, in that event, entitled to recover back the money advanced by him on the mortgage under s. 65 of the Indian Contract Act (IX of 1872). *Javerbhai Jorabhai v. Gordhan Narsi, I. L. R. 39 Bom. 358,* distinguished. PARSHOTTAM VERIBHAI *v.* CHHATRASANGJI (1917) . **I. L. R. 41 Bom. 546**

BROKER.

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 115 . . **I. L. R. 39 All. 81**

BUILDING.

See BOMBAY DISTRICT MUNICIPALITIES ACT (BOM. ACT III OF 1901), s. 3, CL. (7)
I. L. R. 41 Bom. 563

——— addition of bath-rooms in—

See BOMBAY MUNICIPAL ACT (BOM. III OF 1888), s. 349B.
I. L. R. 41 Bom. 741

——— erection of, without sanction—

See UNITED PROVINCES MUNICIPALITIES ACT (II OF 1916), ss. 185, 186.
I. L. R. 39 All. 482

BURDEN OF PROOF.

See CONTRACT . **I. L. R. 39 All. 418**

See HINDU LAW—JOINT FAMILY.
I. L. R. 39 All. 437

See NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881), ss. 64, 76.
I. L. R. 39 All. 364

See SUCCESSION ACT (X OF 1865), ss. 7, 9, 10 . **I. L. R. 41 Bom. 687**

BURMESE LAW.

——— *Inheritance—Right of*

Burmese Buddhist law of succession laid down in the Manu Kyay, r 5 of Book X, the eldest son in a family takes on the death of the father a definite one fourth share of the estate, a right which he is at liberty to assert within any period not outside that fixed by Art 123, Sch I of the Limitation Act of 1908, as the period within which a claim must be made for a share of property on the death of an intestate There is no authority to the effect that the eldest son has merely a right to elect within a certain limited period whether he will take the share of the property or not MAUNG TUN THA v MA THIT (1916)
I. L. R. 44 Calc. 376

BYE-LAW.

——— **a "law for the time being" —**
See SPECIFIC RELIEF ACT (I OF 1877), s 45 **I. L. R. 40 Mad. 125**

——— **for weights and measures—**
See BOMBAY MUNICIPAL ACT (BOM III OF 1888), ss 418, 461, cl (o) **I. L. R. 41 Bom. 580**

——— **validity of—**
See THEATRICAL PERFORMANCE **I. L. R. 44 Calc. 1025**

C

CALCUTTA IMPROVEMENT ACT (BENG. V OF 1911).

——— **ss. 39-42, 49, 68-81—**
See LAND ACQUISITION **I. L. R. 44 Calc. 219**

CALCUTTA MUNICIPAL ACT (BENG. III OF 1899).

——— **ss. 3 (*16*), 286, 337—**
See PUBLIC DRAIN **I. L. R. 44 Calc. 689**

——— **ss. 341, 617—**
See COMPENSATION **I. L. R. 44 Calc. 87**

——— **ss. 559 (*52*), 561—**
See THEATRICAL PERFORMANCE **I. L. R. 44 Calc. 1025**

——— **ss. 559, sub-s. (*52*), 561—***Bye laws 83 and 85—Continuing performance at theatre after 1 a m—Managers of theatre severally punishable—Joint or several offence* Where performance at a theatre having been continued beyond the hour of 1 A M the three co sharer owners and managers thereof were convicted for a breach of bye law 83 made under s 559, sub s (*52*) of the Calcutta Municipal Act and sentenced under bye law 85, one to pay a fine of Rs 20 and the two others each to pay a fine of Rs 10 *Held*, by Chitty, *J* (agreeing with Chaudhuri, *J*, Teunon, *J*, contra) —That the offence in its nature was a single one and the Magistrate was not authorized by law to impose a sentence of fine in excess of Rs 20 in the aggregate AMRITA LAL BOSE v CORPORATION OF CALCUTTA (1917) . **21 C. W. N. 1009**

CALCUTTA MUNICIPAL ACT (BENG. III OF 1899)—*concld*

——— **s. 559**—*concld*

CASTE.

See LIBEL . **I. L. R. 39 All. 561**

CASTE DISABILITIES REMOVAL ACT (XXI OF 1850).

——— *Descendant of Hindu*

have, therefore, no interests in the property of their unconverted relatives *Bhaguant Singh* v. *Kallu, I L R 11 All 100*, dissented from VAITHILINGA v AYYATHORAI (1917)
I. L. R. 40 Mad. 1118

CAUSE OF ACTION.

See CIVIL PROCEDURE CODE (1908), s 20 (c) **I. L. R. 39 All. 607**

CESS.

——— **right of Government to levy, for irrigation purposes—**
See IRRIGATION CESS ACT (MAD VII OF 1865), s 1, PROVISOS 1 AND 2 **I. L. R. 40 Mad. 886**

CHARITABLE INAMS.

——— *Resumption of, by Government—Patta granted to one of the previous trustees—Suit by representative of another trustee for share—Effect of resumption—Distinction between resumption and enfranchisement of personal or service inams* Where the Government resumed certain lands which were held previously as charitable inam and 'after imposing an assessment' granted a patta to one of the persons who were the trustees thereof prior to the resumption. *Held*, that the representative of another trustee had no right to claim a share in the land, as against the trustee to whom the patta was given The principles regulating the ownership of enfranchised lands in cases of enfranchisement of personal or service inams afford no guidance in cases of resumption of charitable inams In cases of enfranchisement there is a change not of ownership of the land, but of the tenure on which it is held, in cases of resumption the land previously the property of the trust is at the absolute disposal of the Government, who can grant it to anyone, who becomes the owner subject to the obligations ordinarily attached to ryotwari tenure *Gunnaiyan* v.

CHARITIES.

See CUTCHI MEMONS **I. L. R. 41 Bom. 181**

See MAHOMEDAN LAW—WAKF **I. L. R. 40 Mad. 116**

CHARTER-PARTY.

———————— *Bills of lading—Where charter-party and bills of lading conflict the prevailing contract is the charter-party—Stevedores, though named by the charterers, are the agents of shipowners, and not of the charterers—D[illegible] improper and insufficient —Shipowners' [illegible] for bad stowage and insufficient dunnage—Shipowner's specific liability for shortage and sweepings under the charter-party.* The plaintiffs chartered the defendant company's steamer 'Abydos' for the carriage of cargo of rice in bags from Akyab, a seaport in Burma, to Bombay. The plaintiffs under the charter-party were empowered to sub-let the whole or part of the cargo, and they sub-let about one-fourth of the cargo space to other shippers. The charter-party expressly provided, *inter alia*, that "nothing herein contained shall exempt the shipowners from liability to pay for damage to cargo occasioned by bad stowage, by improper or insufficient dunnage", that "the charterers' stevedores at loading port to be employed at market rate but not exceeding owner's contract rate", that "all mats and requisite dunnage to be provided by the steamer", that "all sweepings to be delivered to the charterers at port of discharge", and that "the steamer to be responsible for any proved shortage". The bills of lading contained a special exception that the ship was "not responsible for loss or damage caused by insufficient packing, torn, mended, or chafed, weak or fragile bags, and bagging wrappers not for usual and reasonable wear and tear of packages". During the voyage the ship experienced heavy weather for at least two days and throughout encountered average monsoon weather with south-westerly squall. On the cargo being unloaded at Bombay it was found that 710 bags of the plaintiffs were damaged, that there was a shortage to the extent of 400 cwts., and that the sweepings collected amounted on the whole to about 576 cwts. On the evidence adduced in the case it was found that the damage was to a certain extent caused by improper laying of the dunnage at the port of loading. The plaintiffs sued in respect of (*i*) damage, (*ii*) shortage, and (*iii*) sweepings. The defendants contended that the loading and stowage of the cargo, as well as the laying of the dunnage was within the discretion and control of the stevedore as the plaintiff's agent, and not as the defendants' agent, and that in respect of shortage their liability was excluded by the bills of lading. *Held*, (*i*) that the shipowners would be *prima facie* liable for the damage caused by bad stowage or improper or insufficient dunnage and that their liability would not be modified by a clause in the charters-party empowering the charterers to name the stevedores, as the stevedores were the agents and paid servants of the shipowners for the purpose of discharging the duty of the shipowners in loading the cargo; *Harris* v. *Best, Ryley & Co., 68 L. T. 76*, followed; (*ii*) that the defendants were liable in respect of the shortage as the prevailing contract between the shipowner and the charterer was the charter-party, and not the bill of lading; (*iii*) the plaintiffs were entitled to claim the value of the sweepings as specific provision was made in that behalf in the charter-party. BOMBAY AND AFRICA STEAM NAVIGATION CO. *v.* HAJI AZUM (1916).

I. L. R. 41 Bom. 119

CHAUKIDARI CHAKARAN LANDS.

———————— *Zamindar's title to such lands when transferred to him by Collector under s. 50*

CHAUKIDARI CHAKARAN LANDS—*contd.*

of the Village Chaukidari Act (Beng. Act VI of 1870) after their resumption by Government—Bengal Permanent Settlement, 1793—Bengal Regulations I of 1793 s. 8, cl. (4), and VIII of 1793, ss. 36 to 41—Putnidar's right to such lands under putni grant—Preservation of rights of third parties (by s. 51 of Beng. Act VI of 1870). The suits which gave rise to this appeal were brought to recover khas possession from the appellant, the registered proprietor of extensive zamindaris in the Birbhum District of Bengal, of chaukidari chakaran lands resumed by Government, and transferred to him under the provisions of the Village Chaukidari Act (Beng. Act VI of 1870). The plaintiff in each suit (respondents) was the putnidar or dar-putnidar of the village within the boundaries of which the land in each suit was situated. It was objected that the appellant had no such interest in the chaukidari chakaran lands as could be conveyed in a putni lease. *Held* (on a consideration of the nature of chaukidari chakaran lands, the provisions of the Bengal Permanent Settlement of 1793, the Regulations of that time so far as they deal with chakaran lands, and the true meaning and effect of Bengal Act VI of 1870), that the zamindar obtained or retained in the chaukidari chakaran lands situate within the territorial boundaries of a village comprised in his zamindari an interest capable of being made the subject of a putni lease. The settlement of 1793 recognizes and proceeds on the footing that the zamindars are the actual proprietors of the land for which they undertake to pay the Government revenue; and it is clear that since the settlement they have had a *prima facie* title to all lands for which they pay revenue, such lands being commonly referred to as malguzari lands: see *Perhlad Sein* v. *Doorga Persaud Tewaree, 12 Moo. I. A. 289.* On the Regulations of the Permanent Settlement the leading authority is *Joykissen Mookerjee* v. *Collector of East Burdwan, 10 Moo. I. A. 16,* in which Lord Kingsdown said that the effect of the settlement was to divide chakaran lands into two classes, *viz.*, thanadari chakaran lands, that is, land held on service tenure by police officials and all other chakaran lands. The former class were, by Bengal Regulation I of 1793, s. 8, cl. 4, made resumable by Government, the Government relieving the zamindars from the duty of maintaining a police establishment. These lands were in fact shortly afterwards resumed, and became Government lands, the title of the zamindars being extinguished by such resumption. As to all other chakaran lands, whether held by public officers or private servants in lieu of wages, they are dealt with by Regulation VIII of 1793, s. 41. From ss. 37 to 41 inclusive it appears that, whatever may be the case with regard to the private lands of the zamindars, or with regard to chakaran lands, the services for which were purely personal to the zamindar, it was clear that thanadari and chaukidari chakaran lands, the services for which involved the performance of duties in which the public was interested, had not, as a rule, been taken into account for the purpose of increasing the revenue. The effect of a resumption by the Government of chaukidari chakaran lands under the provisions of Bengal Act VI of 1870 is that after the assessment is complete the Collector is, under s. 50, by order in the scheduled form, to transfer to the zamindar subject to such assessment; and by s. 51 such order operates to transfer the land to the zamindar "subject to all contracts thereby made in respect

CHAUKIDARI CHAKARAN LANDS—*concld.*

of, under, and by virtue of which any person, other than the zamindar, may have any right to any land portion of his estate or tenure in the place in which such land may be situate" Those words are wide enough to include, and in their Lordships' opinion do include, the rights of a putnidar under a putni grant by virtue of which the putnidar is lessee of the zamindars' interest in the lands resumed, and also the rights of a dar putnidar ... therefore does

ation and by way of continuance of his existing estate and when the zamindar or those through

I. L. R. 44 Calc. 61

CHEATING.

See EVIDENCE ACT (I OF 1872), ss 11, 14, 15 . . . I. L. R. 39 All. 273

CHILD.

———— **abandonment of—**

See PENAL CODE (ACT XLV OF 1860) s 317 . . I. L. R. 41 Bom. 152

CHRISTIAN MARRIAGE ACT (XV OF 1872).

performing a marriage *according to the Hindu* mode between two persons, one of whom is a Christian, commits an offence under s 68 of the Christian Marriage Act (XV of 1872) *Madras* ... *21st March* ... *d Queen* ... pproved ... xplained

KOLANDAIVELU, *In re* (1917)

I. L. R. 40 Mad. 1030

CIVIL AND REVENUE COURTS.

———— **jurisdiction of—**

See AGRA TENANCY ACT (II OF 1901), ss 4, 167 . I. L. R. 39 All. 605

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), ss 203 TO 207

I. L. R. 39 All. 711

CIVIL COURT.

See HEREDITARY OFFICES ACT (BOM III OF 1874 AS AMENDED BY BOM III OF 1910), ss 25, 36, 63, 64

I. L. R. 41 Bom. 23

CIVIL PROCEDURE CODE (ACT XIV OF 1882).

———— **s 214—**

See PRE-EMPTION.

I. L. R. 44 Calc. 675

———— **ss. 240, 276, 295—**

See ATTACHMENT . I. L. R. 44 Calc. 662

———— **s. 248—**

See LIMITATION ACT (IX OF 1908), SCH I, ART. 183 . I. L. R. 40 Mad. 1127

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*concld*

———— **ss. 278, 282, 283, 287**—*Civil Procedure Code (Act V of 1908), O XXI, rr. 62 and 63*

... passed by him in a ...

... from the terms ...

of the Civil Procedure Code, ... order as that s 282 of the Code had no concern *Durga Prasad* v *Mansa Ram, 1 All L. J 531,* followed *Nemagauda* v *Pareshа I L. R 22, Bom 640,* distinguished GANESH KRISHNA v DAMOO (1916) . . . I. L. R. 41 Bom. 64

———— **ss. 313, 315—**

———— **auction sale under—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O XXI, r. 93

I. L. R. 40 Mad. 1009

———— **s. 317—**

See HINDU LAW—JOINT FAMILY PROPERTY . . L. R. 44 I. A. 201

———— **ss. 366, 368, 371—**

See LIMITATION . L. R. 44 I. A. 218

———— **s. 373—**

See JURISDICTION I. L. R. 44 Calc. 367

———— **ss. 462, 464—**

See COMPROMISE I. L. R. 44 Calc. 829

CIVIL PROCEDURE CODE (ACT V OF 1908)

———— **s. 2**—*"Decree"—Decree ex parte—Appeal—Dismissal of appeal for default—Application to Court of first instance for rehearing of case—Merger* An order dismissing an appeal for default does not amount to a decree within the meaning of s 2 of the Code of Civil Procedure and, consequently, the decree of the lower Court does not merge in the decree of the Appellate Court Where a decree is passed *ex parte*, and an appeal against the decree is dismissed for default, it is ... apply to the ... set it aside ... *Rai, I. L R* ... *Jawahir Lal, I. L. R. 36 All. 350,* referred to ... LIAQAT HUSAIN v. BIBI TAWAIF (1917) . I. L. R. 39 All. 393

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

———— s. 2 (2), O. XXI, r. 22—

See DECREE . **I. L. R. 44 Calc. 954**

———— s. 11—

1. ———— *Res Judicata—Provincial Insolvency Act (III of 1907), ss. 22 and 46—Insolvency Court—Application for recovery of property attached by Court—Subsequent suit for same purpose.* A person claiming as his own property attached by the Judge of an Insolvency Court as property of an insolvent may apply to the Insolvency Court under s. 22 of the Provincial Insolvency Act, 1907, for a declaration of his title and for possession of the property claimed, or he may sue to recover the same in the ordinary way. But where such person has elected to pursue his remedy under s. 23 of the Provincial Insolvency Act, and the claim has, after a full inquiry, been decided against him, and he has not appealed from the decision under s. 46, he cannot afterwards file a separate suit with the same object. *Ram Kirpal* v. *Rup Kuari, I. L. R. 6 All., Ex parte Swinbank, 11 Ch. D. 525,* and *Ex parte Butters, 14 Ch. D. 265.* PITA RAM *v.* JUJHAR SINGH (1917) . **I. L. R. 39 All. 626**

2. ———— *Res judicata—Specific Relief Act (I of 1877), s. 9—Suit for possession in Munsif's Court—Subsequent suit for damages in Court of Small Causes.* The plaintiffs filed a suit under s. 9 of the Specific Relief Act, 1877, in the Court of a Munsif, and obtained a decree on the finding that they had in fact been wrongfully dispossessed by the defendants. They then sued in a Court of of Small Causes for damages on account of the same wrongful dispossession. *Held*, that the finding of the Munsif that the plaintiffs had in fact been dispossessed was a *res judicata* in respect of the subsequent suit in the Court of Small Causes. *Ghulappa bin Balappa* v. *Raghavendra Swamirao, I. L. R. 28 Bom. 338,* and *Raja Simhadri Appa Raw* v. *Ramchandrudu, I. L. R. 27 Mad. 63,* followed. BODLU BHONJA *v.* MOHAN SINGH (1917).

I. L. R. 39 All. 717

———— s. 13 (*b*)—*Foreign judgment, suit on—Judgment obtained by plaintiff after defence had been struck out and "defendant placed in the same position as if he had not defended"—Judgment not on "the merits of the case".* The plaintiff (appellant) sued the defendant (respondent) in the Court of King's Bench in London for a sum of money he alleged to be due to him in respect of transactions he had with the defendant as a member of a firm in Madras who under arrangements between them consigned goods to the plaintiff for sale in London. The defendant denied that he was ever a member of the firm in Madras, and also denied that there was any money due by him to the plaintiff or that the arrangements had been made under which the plaintiff asserted that his claim arose. The defendant refused to answer interrogatories which the plaintiff was allowed to exhibit calling on the defendant to speak as to some of the material matters in dispute, and the defence was thereupon ordered to be struck out, "and the defendant to be placed in the same position as if he had not defended", and judgment was entered for the plaintiff. In a suit brought in the High Court at Madras on that judgment: *Held* (upholding the decision of the appellate High Court), that it had not been given between the parties "on the merits

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

———— s. 13—*concld.*

of the case" within the meaning of s. 13 (*b*) of the Code of Civil Procedure, 1908. KEYMER *v.* VISVANATHAM REDDI (1916) . **I. L. R. 40 Mad. 112**

———— s. 20—

1. ———— *Sale of goods by sample—Vendor and purchaser living in different places—Suit by purchaser for damages for breach of warranty—In which place suit maintainable.* A person residing at Allahabad purchased goods by sample from a firm carrying on business at Bombay. The goods were sent to Allahabad, but on arrival they were discovered to be not according to sample, and the purchaser accordingly instituted a suit for damages against the vendors in the Small Cause Court at Allahabad. The Small Cause Court returned the plaint for presentation in Bombay. *Held*, that the test which the Court ought to have applied to the question was whether delivery of the goods at Allahabad was an essential part of the contract between the parties. SHEO CHARAN LAL *v.* TAJ BHAI ALI BHAI AND SONS (1917).

I. L. R. 39 All. 368

2. ———— *Cause of action—Jurisdiction—Suit to set aside a decree on the ground of fraud—Decree obtained in Bengal—Suit filed in Agra.* It is competent to a Court in the United Provinces to grant a declaration that a decree passed by a Court in another province is fraudulent and null and void as against the plaintiff, and to grant a perpetual injunction restraining the decree-holder from executing it, provided that some part of the plaintiff's cause of action has arisen within the jurisdiction of the Court in which the suit is brought. *Banke Behari Lal* v. *Pokhe Ram, I. L. R. 25 All. 48,* and *Jawahir* v. *Neki Ram, I. L. R. 37 All. 189,* followed. *Umrao Singh* v. *Hardeo, I. L. R. 29 All., 418,* and *Dau Dayal* v. *Munna Lal, I. L. R. 36 All. 564,* distinguished. KHUSHALI RAM *v.* GOKUL CHAND (1917).

I. L. R. 39 All. 607

———— s. 24 (*4*)—*Suit instituted in Court of Subordinate Judge invested with Small Cause Court powers—Transfer of suit by order of District Judge to Munsif's court—Jurisdiction of Munsif—Appeal—Provincial Small Cause Courts Act (IX of 1887), ss. 32 to 35.* The expression "a Court of Small Causes" in s. 24 (4) of the Code of Civil Procedure includes Courts invested with Small Cause Court jurisdiction as well as Courts constituted under Act No. IX of 1887. Where, therefore, a suit of a Small Cause Court nature, instituted in the Court of a Subordinate Judge invested with the powers of a Judge of Small Cause Court, was transferred by the District Judge to the Court of a Munsif not possessing the powers of a Small Cause Court, and was tried by him and a decree passed therein, it was *held* that no appeal lay from the Munsif's decree. *Mangal Sen* v. *Rup Chand, I. L. R. 13 All. 324,* and *Sankararama Aiyar* v. *Padmanabha Aiyar, 23 Mad. L. J. 373,* followed *Ramchandra* v. *Ganesh, I. L. R. 23 Bom. 382,* and the reasoning of *Dulal Chandra Deb* v. *Ram Narain Deb, I. L. R. 31 Calc. 1057,* dissented from. SUKHA *v.* RAGHUNATH DAS (1916) . **I. L. R. 39 All. 214**

———— s. 45—

See EXECUTION . **I. L. R. 40 Mad. 1069**

———— s. 47, O. XXI, rr. 100, 101—

Exonerated defendant, whether a party to the suit—

——— s. 47—concld.

Suit for redemption—Person claiming adversely to both the mortgagor and the mortgagee—Misjoinder of causes of action and parties—Party exonerated—Delivery of possession in execution—Objection to delivery of property by exonerated defendant—Proceedings whether under s 47 or O XXI, r 100 of the Code When a party to a mortgage suit, who sets up a title adverse to both the mortgagor and mortgagee, has been exonerated from the suit on the ground of misjoinder and his claim has not been adjudicated upon in the suit: *Held,* that he does not remain a party to the suit for the purposes of s 47 of the Civil Procedure Code and his claim petition in respect of properties delivered in execution of the decree to the decree holder falls under O XXI, r 100 of the Code *Ramasuami Sastrulu* v *Kamesuaramma, I L R 23 Mad 361,*

416, referred to *Jaggesuara Dutt* v *Bhuban Mohan Mitra, I L R 33 Calc 425,* and *Musammat Radha Kunuar* v *Thakur Reoti Singh ,20 C W N 1279,* followed KRISHNAPPA *v* PERIYASWAMY (1916)
I. L. R. 40 Mad. 964

——— **ss. 47 and 52**—*Execution of decree—Parties impleaded as representatives of a deceased debtor—Sale in execution—Objection by representatives to sale—Procedure* Persons who are impleaded in a suit as representatives and asset-holders of a deceased party are in the same position as regards s 47 of the Code of Civil Procedure, 1908, as persons who are parties in their own right An objection, therefore, raised by such persons to the sale of property in execution of the decree must be taken under the above mentioned section, and not by way of a separate suit *Seth Chand Mal* v *Durga Dei, I L R 12 All 313, Basti Ram* v *Fattu, I L R 8 All 146,* and *Punchanun Bundopadhya* v *Rabia Bibi, I L R 17 Calc 711,* referred to DULLA *v* SHIB LAL (1916)
I. L. R. 39 All. 47

recovery of
and ascertc
balance—T

Held, by the Full Bench (PHILLIPS, J , dissenting) —Where a mortgage decree provides for recovery of any balance from the other properties of the mortgagor in case the sale proceeds of the mortgaged properties are found insufficient to satisfy the entire decree amount the decree holder has, under s 48, Civil Procedure Code, twelve years for the recovery of such balance reckoned from the time when it is ascertained to be due *Ratnachalam Ayyar* v *Venkatarama Ayyar, I L R. 29 Mad 46,* and *Narhar Raghunath* v *Krishnaji Govind, I. L R 36 Bom 368,* followed *Venkata Perumal* v *Prayag Dasji, 29 I C 556,* overruled *Per* ABDUR RAHIM, OFFG C J , and SESHAGIRI AYYAR, J —" The date of the decree" in clause (*a*) of s 48, Civil Provecedure Code, means the date the decree becomes executable *Per* PHILLIPS, J —Under s 48, Civil Procedure Code, the period of twelve years for the recovery of the balance is to be computed from the date the decree actually bears. AIYASAMIER *v* VENKATACHELA MUDALI (1916) . . **I. L. R. 40 Mad. 989**

——— **s. 59**—*Document not produced with plaint and treated in trial Court as piece of evidence, it should be treated in appeal as document creating rights—Disadvantage to defendant from such procedure* *Held,* that the High Court should not have treated a Razi petition which the plaintiff did not produce in Court when he presented his plaint or which or a copy whereof he did not deliver to be filed with the plaint as required by s 59 of the

expressed no opinion), a line of defence requiring evidence might have been adopted which was unnecessary so long as it was used merely as a piece of evidence SULAIMAN *v* BIYATHTHUMMA (1916).
21 C. W. N. 553

——— **s. 60**—*Execution of decree—Attachment—Pay of officer in the Indian Army* *Held,* that the pay of an officer of the Indian Army may be attached in execution of a decree against him to the extent of one-half *Lecky* v *The Bank of Upper India, Limited, I L R 33 All 529* distinguished *Prins* v *Murray & Co 23 Indian Cases 935,* followed HAY *v* RAM CHANDAR (1917)
I. L. R. 39 All. 308

——— **s. 60 (*1*)**—*Right to future maintenance,*

an agreement, is not a *debt* within the meaning of s 60 (*1*), Civil Procedure Code, it cannot be attached in execution of a decree, such a step being prohibited by s 60 (*n*), Civil Procedure Code, and as there can be no attachment no receiver can be appointed under O XL, r 1, Civil Procedure Code, to collect the future allowances as and when they fall due for satisfying the decree *Nanammal* v *The Collector of Trichinopoly, 20 Mad L J 97,* and *Tara Sundari Debi* v *Saroda Charan Banerjee, 12 C L J. 146,* followed *Ranee Annapurni Nachiar* v. *Swaminatha Chettiar, I L R 34 Mad 7,* considered PALIKANDY MAMMAD *v* KRISHNAN NAIR (1916) . . . **I. L. R. 40 Mad. 302**

——— **s. 60 (*c*)**—*Decree—Execution—Attachment—'Agriculturist', meaning of* A judgment-debtor put in an application before a Subordinate Judge claiming that his house attached in execution should not be sold by reason of the provisions of s 60 (*c*) of the Civil Procedure Code, 1908, as he

the term 'agriculturist' as used in s 60 of the Civil Procedure Code should be held to include persons engaged in cultivating the soil for remuneration although they may have no proprietary interest in the soil DEVAPE HEGDE *v* VAIKUNT SUBAYA (1917) . . **I. L. R. 41**

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——————**s. 64, O. XXXVIII, r. 10**—*Attachment before judgment, scope and effect of section, if limited only to transaction subsequent to attachment—Contract to sell entered into before attachment but specifically performed thereafter and before execution sale—Purchaser at execution sale and purchaser under contract to sell, respective rights of.* The plaintiffs attached the disputed property before judgment and purchased it at an execution sale. Before the attachment by the plaintiffs the debtor had executed an agreement of sale in respect of the same property in favour of the defendant which was followed by a suit for specific performance. In pursuance of the decree in this suit the Court, before the date of the execution sale, executed a *kobala* conveying the property to the defendant who also obtained possession before the said sale. Before the plaintiff purchased at the execution sale he had notice of the agreement under which the defendant's purchase was made. *Held,* that the provision in s. 64 of the Civil Procedure Code is for the protection of a creditor only against transactions subsequent to the attachment and the defendant's purchase must prevail. There is no reason to hold that the provision in O. XXXVIII, r. 10, is limited to rights *in rem.* That the defendant had a right to have the contract to sell specifically performed and under s. 489 of Act XIV of 1882, corresponding to O. XXXVIII, r. 10 of the present Code, that right was not affected by the attachment. MADAN MOHAN DE *v.* REBATI MOHAN PODDAR (1915) . . . **21 C. W. N. 158**

——————**s. 73**—

See LIMITATION ACT (IX OF 1908), SCH. 1, ARTS. 29, 36, 120.

I. L. R. 39 All. 322

————————*Rateable distribution, application for—Decree, validity of, if can be impeached—Inquiry, judicial or administrative—Objection to decree as collusive, if can be raised—Power of Court—Conditions under s. 73.* An inquiry under s. 73 of the Civil Procedure Code is of a non-judicial character and a Court charged with the distribution of assets under that section has no power to inquire into the validity or the *bona fides* of a decree on the strength of which rateable distribution is claimed. *Shankar Sarup* v. *Mejo Mal, I. L. R. 23 All. 313,* referred to. The only conditions to be satisfied under s. 73 are that there must have been an application *before* the assets are realized and that the decree should not have been satisfied. SARAVANA PILLAI *v.* ARUNACHALAM CHETTIAR (1916) . **I. L. R. 40 Mad. 841**

——————**s. 73, O. XXI, r. 52**—

See EXECUTION OF DECREE.

I. L. R. 44 Calc. 1072

——————**s. 73, O. XXI, r. 65**—

See RATEABLE DISTRIBUTION.

I. L. R. 44 Calc. 789

——————**s. 83**—*Suit for judicial separation—Right of an alien enemy to sue in British Court.* In this case the Court granted an application for an order directing the summons, together with a copy of the petition filed by the petitioner for a judicial separation, to be sent to the Probate, Divorce, and Admiralty Division of the High Court in England for transmission to the Foreign Office for service on the respondent, the petitioner being the wife of a

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——————**s. 83**—*concld.*

German living in Germany, but herself residing in British India, apparently with the permission of the Government of India. REIFFSTECK *v.* REIFFSTECK (1917) . . . **I. L. R. 39 All. 377**

——————**s. 91**—*Vesting of highway in public authority, if precludes private individuals suing with leave in respect of public nuisance on street—Dedication, acceptance of, how established—User as evidence of dedication—Calcutta Municipal Act (Beng. III of 1899), s. 336.* S. 336 of the Calcutta Municipal Act by vesting public streets, including the soil, in the Calcutta Municipal Corporation does not take away the right of members of the public to sue under s. 91 of the Civil Procedure Code in respect of a nuisance committed on the street. Where a highway is dedicated to the public *acceptance by the public requires no formal* act of adoption by any persons or authority but is to be inferred from public user of the way. SERAJMAL KHORAD *v.* ABHOY KUMAR ROY CHOWDHURY (1917) . . . . **21 C. W. N. 595**

——————**s. 92**—

1. ———————— *Applicability of, to the suit—Religious Endowment—Temple subject to superintendence of Temple Committee—Offerings by worshipper, ownership of—Permanent alienation of offerings by Committee, validity of—Suit to set aside—Limitation—Cause of action—Civil Procedure Code (Act V of 1908), O. I, r. 8—Suit by two worshippers on behalf of themselves and others under, maintainability of—Religious Endowments Act (XX of 1863), s. 18, or Civil Procedure Code (Act V of 1908), s. 92, sanction under, necessity of—Suits in which reliefs asked for against strangers to trust, no necessity for sanction for—" Vesting any property in trustees "—S. 92, clause (h), meaning of—Scope of—Respective rights and duties of trustees and Temple Committees.* Two of the worshippers of a temple near Karur, purporting to sue on behalf of themselves and others, with the leave of the Court obtained under O. I, r. 8 of the Code of Civil Procedure, instituted a suit against the members of the Devasthanam Committee of Karur, to whose superintendence the temple was subject, and the *archakas* and *stanikas* of the temple for a decree (i) declaring the invalidity as against the temple of a perpetual lease granted by the Committee to the *archakas* and *stanikas* of the right to collect offerings made by the pilgrims; and (ii) directing that only the trustee or the manager duly appointed should retain the right of collecting the said offerings. The plaint alleged that the alienation in question was highly detrimental to the interests of the temple and was beyond the power of the Committee. The trustee of the temple was not impleaded in the suit and no sanction, as provided by s. 92 of the Civil Procedure Code (Act V of 1908), or s. 18 of the Religious Endowments Act (XX of 1863), was obtained for instituting the suit. *Held,* by the Full Bench :—(i) that s. 92 of the Civil Procedure Code (Act V of 1908) is not applicable to suits whose object is to establish the right of the temple to property in the hands of strangers or alienees from the temple authorities; and (ii) that the suit was, therefore, maintainable without such sanction. *Obiter:* The alienation in question is void. *Per* ABDUR RAHIM, OFFG. *C.J.* The reliefs prayed for in the suit are not of the kind mentioned in s. 92, Civil Procedure Code. The phrase " vesting any property in

CIVIL PROCEDURE CODE (ACT V OF 1908) *—contd*

——— **s. 92**—*concld.*

trustees" in s 92 contemplates cases where new trustees have been appointed or other cases of a similar nature such as those mentioned in ss 26 to 35 of the Trustee Act of 1893 (56 & 57 Vict, cap 53) of England Clause (*h*) of section 92 must be read along with the specified reliefs and the reliefs that can be granted under it should not be of a character different from those expressly mentioned *Per* COUTTS TROTTER and SESHAGIRI AYYAR, *JJ* (in the Division Bench) The alienation in question relating not only to

spective rights and duties of trustees and temple committees discussed VENKATARAMANA AYYANGAR *v* KASTURIRANGA AYYANGAR (1916)

I. L. R. 40 Mad. 212

2. ——— *Suit under, nature*

add persons as additional parties whose presence may be necessary in order to enable the Court effectually and completely to adjudicate upon the questions involved in the suit *Varadayya Chetty*

—ed

All

v

I. L. R. 40 Mad. 110

——— **s. 102**—

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), SCH II, ART 8

I. L. R. 41 Bom 367

——— **s. 104, O XLIII, r. 1; O. XXI, r. 90** —*Letters Patent, s 10—Appeal from an order of a single Judge dismissing an appeal from an order refusing to set aside a sale* *Held,* that no appeal will lie under s 10 of the Letters Patent from an order of a single Judge of the High Court dismissing an appeal from an order of an execution Court under O XXI, r 90 of the Civil Procedure Code, refusing to set aside a sale *Naim ullah Khan v Ishan ullah Khan, I L R 14 All 226,* followed PIARI LAL *v* MADAN LAL (1916)

I. L. R. 39 All. 191

——— **ss. 107, 151; O. XLI, r. 23**—

See REMAND . **I. L. R. 44 Calc. 929**

——— **s. 110**—

See APPEAL TO PRIVY COUNCIL

I. L R. 44 Calc. 119

——— **s. 114; O. XLVII, r. 1**—

See REVIEW . **I. L. R. 44 Calc. 1011**

——— **s. 115**—

See APPEAL RIGHT OF

I. L. R. 44 Calc. 804

See CRIMINAL PROCEDURE CODE, s 476

I. L. R. 39 All. 387

See RELIGIOUS ENDOWMENTS ACT (XX OF 1863), s 10

I. L. R. 40 Mad. 793

CIVIL PROCEDURE CODE (ACT V OF 1908) *—contd*

——— **s. 115**—*concld*

See SANCTION FOR PROSECUTION

I. L. R. 44 Calc. 816

1. ——— *Agra Tenancy Act (II of 1901)—Suit relating to an agricultural holding—Order adjourning suit indefinitely—Revision—Powers of High Court—Statutes 5 and 6 Geo V, Cap LXI, s 107* Plaintiff brought a suit in a Civil Court alleging that the defendants' father had been a lessee of certain property for 7 years, that after the expiry of the lease he became manager of the property and after his death, the defendant also became manager He pleaded that the defendant had been dismissed from his position as manager and asked for possession of the property which comprised shares in 26 villages, a market and some collection houses The defendant pleaded that he was a "thekadar" within the meaning of the Tenancy Act, and filed an application praying the Court to exercise its jurisdiction under s 202 of that Act The Court acceded to this prayer and adjourned the suit to an indefinite period till the question was decided by the Revenue Court The plaintiff applied in revision against the order *Held* (*Per* PIGGOTT, *J*), that the revision was incompetent as it was directed against an interlocutory order and a remedy by way of appeal was open to the plaintiff wherein all matters could be decided, (*Per* WALSH, *J*) that a revision lay to the High Court DHANDEI KUNWAR v CHOTU LAL (1916)

I. L. R. 39 All. 254

2. ——— *Small Cause Court suit tried as a regular suit—Jurisdiction—Appeal—Revision* Where a Small Cause suit is tried by a Munsif on the original side and his decision is reversed on appeal, the High Court is bound to set aside the appellate decree as being passed without jurisdiction *Kollipara Seetapathy v Kanhipati Subbayya I L R 33 Mad 323,* followed ABDUL MAJID *v* BEDYADHAR SARAN DAS (1916)

I. L. R. 39 All. 101

3. ——— *Valuation of suit—*

I. L. R. 39 All. 723

——— **s. 115; O. XXIII, r. 1**—

See JURISDICTION OF HIGH COURT

I. L R. 44 Calc. 454

——— **s 122**—

See POWER OF ATTORNEY

I. L. R. 41 Bom. 40

——— **s. 144**—

1. ——— *Decree—Execution*

decree the lands were delivered to the plaintiff.

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

———— s. 144—*contd.*

On an appeal preferred by the defendant, who was then a minor, the High Court amended the decree on August 17th, 1903, by excepting from the decree for delivery two survey numbers. The defendant attained majority in October, 1912, and on August 4th, 1914, he made an application under s. 144 of the Civil Procedure Code, 1908, for delivery to him of the two survey numbers. It was contended that the minority of the defendant would not save limitation under s. 6 of the Indian Limitation Act, 1908, unless the application be treated as one for execution of the decree within the meaning of that section. *Held*, that the application was not barred as it was virtually an application for execution of the High Court decree amending the decree of the trial Court. KURGODIGOUDA *v.* NINGANGOUDA (1917) . **I. L. R. 41 Bom. 625**

2. ———— *Decree, transfer of, recognized in execution—Declared invalid in subsequent suit to set aside transfer—Restitution of amount paid under first decree.* S. 144 is not confined to cases where restitution is claimed on the reversal of a decree in first or second appeal. Provided the decree is varied or reversed, the section applies however the reversal or variance has been effected. *Shama Purshad Roy Chowdery* v. *Hurro Purshad Roy Chowdery, 10 Moo. I. A. 203, at pages 211 and 212,* referred to. An order in execution-proceedings, recognizing the transfer of a decree and allowing execution to proceed which determined a question arising between the judgment-debtor and the representative of the decree-holder, is a *decree* as defined in the Code of 1882; and when that order was superseded by a *decree* in a subsequent suit declaring the invalidity of the transfer, and restraining the latter from receiving the decree-amount, the judgment-debtor is entitled, under s. 144, Civil Procedure Code (1908), to recover from the transferor the amount paid, with interest. SUBBARAYUDU *v.* YERRAM SETTI SESHASANI (1916) . . **I. L. R. 40 Mad. 299**

———— **ss. 144 and 11, expl. IV, and 47, O. II, r. 2**—*Restitution, applications for—Execution applications—Successive applications—Res judicata—Rule of constructive res judicata, applicability of—Previous applications for principal—Subsequent application or interest, whether barred.* Where a judgment-debtor who had applied for and obtained restitution of a sum of money recovered from him in execution of a decree which was subsequently reversed on appeal, filed a subsequent application for recovery of interest on the amount for the period during which the decree-holder had the use of the money: *Held*, that the subsequent application was not barred by the rule of constructive *res judicata* under s. 11, explanation IV, or by O. II, r. 2 of the Civil Procedure Code. Unless the decision of the question subsequently raised was either expressly given, or must be deemed to have been necessarily implied in the previous decision, the principle of *res judicata* should not be applied to execution proceedings. *Lakshminarayana* v. *Pallamaraju, 4 M. L. W. 101,* referred to. *Balasubramania Chetty* v. *Swarnammal, I. L. R. 38 Mad. 199,* followed. An application for restitution is an application in execution under the new Code of Civil Procedure (Act V of 1908) as under the old Code (Act XIV of 1882). *Prag Narain* v. *Kamakhia*

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

———— s. 144—*concld.*

Singh, I. L. R. 31 All. 551, referred to. SOMASUNDARAM *v.* CHOKKALINGAM (1916).

I. L. R. 40 Mad. 780

———— **s. 145**—*Execution of decree—Security for performance of decree hypothecating immovable property—Mode of enforcing security.* While a security bond given to a Court under s. 145 of the Code of Civil Procedure can be enforced so far as the personal liability of the surety is concerned by means of executing the original decree against him, if the surety takes upon himself more than a personal liability and hypothecates immovable property, such hypothecation can only be enforced against the property by means of a regular suit. *Janki Kuar* v. *Sarup Rani, I. L. R. 17 All. 99,* not followed. *Mukta Prasad* v. *Mahadeo Prasad, I. L. R. 38 All.* 327, distinguished. AMIR *v.* MAHADEO PRASAD (1916) . **I. L. R. 39 All. 225**

———— **s. 151**—*Costs against persons behind benamidar creditor obtaining adjudication order in insolvency proceeding.* Certain persons were adjudicated insolvents on the application of a lady who professed to be a creditor. The insolvents questioned the right of the lady to claim as a creditor in the insolvency before the Official Assignee who held that the lady was not a creditor but a *benamidar* for certain other persons. Against this decision of the Official Assignee the lady preferred an appeal which was ultimately dismissed by the Court of Appeal. The adjudication order was also cancelled. On the application of those who had been adjudicated insolvents: *Held*, that they are entitled to costs in respect of the proceedings connected with the *benamidar's* claim as a creditor in insolvency against the real persons behind the *benamidar* when it appeared that the person put forward was of no means, and was put forward by them with a view to abusing the process of the Court. KETOKY CHARAN BANERJI *v.* SARAT KUMARI DEBI (1917).

21 C. W. N. 826

———— **s. 151; O. IX, r. 13**—*Procedure—Minor—Decree against minor set aside on ground of want of proper appointment of guardian ad litem—Remedies open to plaintiff.* Under the Code of Civil Procedure a suit may be instituted against a minor by name. It is the duty of the Court to appoint a proper guardian *ad litem.* The institution of the suit is complete and saves limitation, but its further progress depends upon the appointment of a suitable guardian *ad litem.* Where proceedings taken to appoint a guardian *ad litem* for a minor in a suit have been declared to be invalid, and a decree passed against a minor has been set aside because the minor was not properly represented in the suit, the Court whose duty it ultimately is to appoint a guardian has inherent power, under s. 151 of the Code of Civil Procedure, to revive the suit under O. IX, r. 13 of the Code. *Raj Kumar Roy* v. *Hara Krishna Chakravarti, 10 Indian Cases, 355.* BHAGWAN DAYAL *v.* PARAM SUKH DAS (1916) . . . . **I. L. R. 39 All. 8**

———— **s. 152; O. XLVII, r. 1**—

See PRACTICE . **I. L. R. 44 Calc. 28**

———— **O. I, rr. 1, 3**—*Apply to questions of joinder of parties, as well as causes of action.* Questions of joinder of parties and causes of action are

CIVIL PROCEDURE CODE (ACT V OF 1908) *—contd*

——— O I, rr. 1, 3—*concld*

governed by the same principle whether the claim is founded on breach of contract or on tort RAMENDRO NATH RAY *v* BROJENDRO NATH DAS (1917) . . . . . 21 C W. N. 794

and possession against vendor and the vendor s copar ceners—Specific Relief Act (I of 1877), s 27 (b) and (c) Where a plaintiff sued a member of a joint Hindu family for specific performance of a contract to sell his share, and included in the same suit a claim for partition and possession against

contra)—(1) that the claim for partition was wrongly joined with the claim for specific per formance, as at the date of suit the plaintiff had

for specific performance as subsequent transferees with notice *Tasker* v *Small, 3 My & Cr 63*, applied *Per* ABDUR RAHIM, *J*—The suit as

Act A right to ask both for specific performance, as well as for partition and possession, arises at the time the vendor refuses to carry out the bargain and give possession of the property The right to possession *arises out of* the contract to sell within the meaning of O I, r 3, Civil Procedure Code RANGAYYA REDDY *v* SUBRAMANIA AYYAR (1917) . . . . I. L. R. 40 Mad. 365

——— O. I, r. 8—

See MOSQUE PROPERTY, SUIT FOR I. L. R. 44 Calc. 258

See RELIGIOUS ENDOWMENT I. L. R. 40 Mad. 212

——— O. I, r. 9—*Parties, non joinder, dis missal of suit for, if proper—Amendment—O II, r 5, joining claims against executors personally and as executors—O. I, r. 1—Joinder of claim in the alternative as shebait and as owner—Inconsistent positions* Plaintiff alleged that one J was in possession of shares of coparcenary properties be longing to himself and others, including one N, from whose widow (it was averred) J had improperly obtained an *ekrar* under which he retained posses sion of N's share till his death After his death defendants Nos 2 to 6 (who, it transpired, were executors to the will of J) remained in possession of that share After J's death N's widow adopted plaintiff as N's son, and plaintiff brought this suit to recover possession of N's share, with mesne profits ... making de ... legatee ... personal ... that

these defendants were keeping the plaintiff out of

CIVIL PROCEDURE CODE (ACT V OF 1908) *—contd*

——— O. I, r. 9—*concld*

possession The plaintiff stated that so far as he had come to know on inquiry, the properties in suit were *debutter* properties and that he and others of the family had *shebaiti* interest therein,

in his own right as owner The first Court dis missed the suit on the first of these grounds, and was also of opinion that the suit was not main tainable by plaintiff alternatively as *shebait* and

pletely to adjudicate all the questions in

rightly and properly held as executors and the "estate" in its physical sense That the claim of the plaintiff in the alternative as *shebait* and as owner was not open to objection, having arisen

NATH RAY (1917) . . 21 C. W. N. 939

——— O. I, r. 10—*Plaintiff described as a minor, really a major—Bona fide mistake of next friend—Dismissal of suit, if proper—Procedure to be adopted* Where a plaintiff was described in the

I. L. R 20 All ... *v* NARAYANA AYYAR (1916)
I. L. R. 40 Mad. 743

——— O. II, r. 2—

See LIMITATION ACT (IX OF 1908), SCH I, ARTS 62 AND 120 I. L. R. 40 Mad. 291

——— O II, r. 2; O. XXXIV, rr. 2 and 4—*Mortgage—Suit for sale—Construction ment—Possibility of separate suits for*

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— **O. II, r. 2**—*concld.*

principal. A mortgage bond executed on the 14th of September, 1910, provided that the mortgage debt should be repayable after the expiry of three years. It also provided that, if interest remained unpaid for more than a specified time, the mortgagee might, without waiting for the expiry of the term of the mortgage, sue for either the unpaid interest or the whole amount of principal and interest then due. It further provided that, if the mortgage debt was not paid at due date, the whole amount, principal and interest, might be recovered by suit. After the expiry of the term of the bond, the mortgagee sued to recover arrears of interest only and obtained a decree, the defendant not entering an appearance. In that suit the plaintiff did not allege that he had a right to sue for the principal separately at a subsequent date. *Held*, on a construction of the bond in suit, and with reference to the former pleadings, that the subsequent suit was barred by O. II, r. 2 of the Code of Civil Procedure. *Read* v. *Brown, 22 Q. B. D. 128,* and *Murti* v. *Bhola Ram, I. L. R. 16 All. 165,* referred to. *Yashvant Narayan Kamat* v. *Vithal Divakar Parulekar, I. L. R. 21 Bom. 267,* and *Rambhaj* v. *Devia, Punj. Rec. 1881, p. 296,* distinguished. *Per* PIGGOTT, J. Rr. 2, 4 of O. XXXIV of the Code of Civil Procedure do not contemplate that there should be more than one suit for sale on a mortgage. Whether or not it might be possible so to draft a mortgage as to evade this statutory obligation this had not been done in the present case. MUHAMMAD ZAKARIYA *v.* MUHAMMAD HAFIZ (1917) . . . . **I. L. R. 39 All. 506**

——— **O. III, r. 2 (a)**—

See POWER-OF-ATTORNEY.

I. L. R. 41 Bom. 40

——— **O. V, r. 3 ; O. IX, r. 12**—*Order for personal attendance of plaintiff—Non-attendance of plaintiff on adjourned date—Dismissal of suit.* An order made by a Court for the personal appearance of a party to a suit on a particular date does not imply that the party to whom it is issued is bound to appear on any subsequent date to which the suit may be adjourned. SUNDAR NATH *v.* MALLU (1917) . . . . **I. L. R. 39 All. 476**

——— **O. VII, r. 11**—

See COURT-FEE . **I. L. R. 44 Calc. 352**

——— **O. VIII, rr. 3, 4, 5**—*Pleadings—Averment in the plaint not denied specifically or by necessary implication in written statement—Fact not necessary to be proved—Practice—Limitation.* The plaintiffs sued to recover a sum of money on an account stated. For the purpose of saving limitation they relied in their plaint upon a letter sent by the defendants' firm. The defendants in their written statement stated :—" The plaintiffs' suit is not in time. The suit is not saved by the letter put in from the bar of limitation ". The question being raised whether in this state of the pleadings the letter could be taken as having been admitted. *Held,* that under rr. 3, 4, 5 of O. VIII of the Civil Procedure Code, 1908, the letter must be accepted as admitted between the parties and, therefore, unnecessary to be proved. LAXMINARAYAN *v.* CHIMNIRAM GIRDHARILAL (1916) . . . . **I. L. R. 41 Bom. 89**

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— **O. VIII, r. 6**—

1. ——— *Set-off—Plaintiffs' claim based upon an account of goods supplied—Defendant pleaded by way of set-off amount of wages due—Claims based upon a money demand—Capacities of parties not varied—Set-off can be allowed.* The plaintiffs' claim was based upon an account of goods supplied to the defendant. The defendant admitted the claim but urged by way of set-off the amount of pay due to him by the plaintiff. The Subordinate Judge allowed the set-off and found that the plaintiffs' claim was satisfied. The District Judge was of opinion that it was not open to the defendant to urge by way of set-off the claim which he did urge. On application by the defendant to the High Court : *Held, that under* O. VIII, r. 6, it was competent to the defendant to urge by way of set-off the claim which he sought to urge as the capacity in both these cases was nothing but the personal capacity, the claims being based upon a money demand. RAGHAVENDRA RAOJI *v.* YALGURAD RAMCHANDRA (1916).

I. L. R. 41 Bom. 163

2. ——— *Set-off—Suit by clerk, who had left employment without notice, for arrears of wages—Counter-claim for damages in lieu of notice.* *Held*, in a suit by a clerk, who had left his employers without notice, to recover arrears of wages from his employers, that it was not competent to the defendants to counter-claim against the plaintiff for damages in lieu of notice. VICTORIA MILLS COMPANY, LIMITED, *v.* BRIJ MOHAN LAL (1917) . . . . **I. L. R. 39 All. 362**

——— **O. IX, rr. 4, 9 ; O. XLVII, r. 1**—

See SMALL CAUSE COURT SUIT.

I. L. R. 44 Calc. 950

——— **O. IX, r. 13**—*Decree ex parte as against one of several defendants—Such defendant not a party to appeal—Appeal dismissed as against contesting defendants—Application by non-appearing defendant to set aside ex-parte decree against her—Merger.* Where a person who was originally a party to a suit is not made a party to the appeal preferred against the decree passed in the suit, either as appellant or respondent, and the Appellate Court has not adjudicated upon his case, the decree of the Court of first instance does not merge in that of the Court of Appeal. It is, therefore, open to such a person, if he is otherwise in a position to do so, to apply under O. IX, r. 13 of the Code of Civil Procedure, 1908, to the Court which passed the decree for an order to set it aside as against him. The following cases were referred to in the judgment of SUNDAR LAL, J. *Ramanadhan Chetti* v. *Narayanan Chetty, I. L. R. 27 Mad. 602, Sankara Bhatta,* v. *Subraya Bhatta, I. L. R. 30 Mad. 535, Damodar Manna* v. *Sarat Chandra Dhal, 13 C. W. N. 846 ; 3 Indian Cases 468, Kumud Nath Roy Chowdhury* v. *Jotindra Nath Chowdhury, I. L. R. 38 Calc. 394, Shajan Bibi* v. *Saffir-ud-din, 26 Indian Cases 412, Dhonai Sardar* v. *Tarak Nath Chowdhury, 12 C. L. J. 53, Inlu Miah* v. *Dar Bakhsh Bhuiyan, 15 C. W. N. 798, Brij Lal Singh* v. *Chowdhry Mahadeo Prasad, 17 C. W. N. 133, Hedlot Khasia* v. *Karan Khasiani, 15 C. L. J. 241, Manomohini Chawdhrani* v. *Nara Narayan Rai, 4 C. W. N. 456, Palakdhari Rai* v. *Mankaran Rai, 7 All. L. J. 598,* and *Mathura Prasad* v. *Ram Charan*

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd*

——— **O. IX, r. 13**—*concld*

Lal, I L R 37 All 208 GAJRAJ MATI TIWARIN *v* SWAMI NATH RAI (1916) . **I. L. R. 39 All. 13**

——— **O. IX, r. 13 ; O. XVII, r. 3**—*Procedure—Non appearance of defendant—Decree passed on merits in absence of defendant—Appeal—Application for rehearing*

fendants filed an application for a rehearing before the Munsif who, however, rejected it They then appealed against the decree to the District Judge, who dismissed the appeal *Held*, on second appeal by the defendants against the District Judge s decree, that the defendants might and should have appealed against the rejection by the Munsif of

I. L R. 39 All. 143

——— **O. X, r. 4 ; O XLIII, r. 1**—*Order striking out defence for failure of defendants to appear—Appeal* Whether an order passed by a Court which is purporting to deal with one of the parties before it under the provisions of O X, r 4 of the Code of Civil Procedure does or does not amount to "pronouncing judgment" against that party depends upon the particular facts of each case Where a Court struck off the defence of one defendant out of three but ultimately decided

SAHI *v* BITHAL DAS (1917)
I. L. R. 39 All. 450

——— **O. XXI, r. 2**—

See EXECUTION PROCEEDINGS
I. L. R. 40 Mad. 233

——— **O. XXI, r. 2 ; O. XXXIV, rr. 4, 5** —*Preliminary decree—Decree ordering payment by instalments and, in default of payment of any one instalment, ordering execution for whole amount—Default made—Payment out of Court—Application for decree absolute—Limitation Act (IX of 1908), Sch I, Art 181.* *Held*, that O XXI, r 2 of the Code of Civil Procedure has no application to a decree for sale on a mortgage by which the mortgage money happens to be made payable by instalments RAMJI LAL *v* KARAN SINGH (1917)
I. L. R. 39 All. 532

——— **O. XXI, r. 2 (3)**—*Transferee decree-holder—Application to execute the decree—Transfer, benami for one of the judgment debtors—Objection by another judgment debtor—Competency of executing Court to inquire into title of transferee* O XXI, r 2 (3) Civil P ... (Act V of 1908) does

relies show that there has been a payment which has not been certified, and, when the transferee is found to be such a benamidar, the Court is bound

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd*

——— **O. XXI, r. 2 (3)**—*concld.*

by O XXI, r 16, to refuse execution in his favour. RAMAYYA *v* KRISHNAMURTI (1916)
I. L. R. 40 Mad. 296

——— **O. XXI, r. 13**—

See ADMINISTRATION SUIT.
I. L. R. 44 Calc. 890

——— **O. XXI, rr. 62, 63**—

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), ss 278, 282, 283, 287.
I. L. R. 41 Bom. 64

——— **O. XXI, r. 63**—

See LIMITATION ACT (IX OF 1908), SCH I, ART 11 . **I. L. R. 40 Mad. 733**

See RES JUDICATA.
I. L. R. 44 Calc. 698

——— **O. XXI, r. 66**—*Execution of decree—Sale proclamation—Valuation of property to be sold —Appeal.* *Held*, that no appeal will lie from a statement made in a sale proclamation as to the value of the property advertised for sale *Sitagami Achi* v *Subrahmania Ayyar, I L R 27 Mad 259*, followed AJUDHIA PRASAD *v* GOPI NATH (1917) . . . . **I. L. R. 39 All. 415**

——— **O. XXI, r. 71**—

See PROVINCIAL INSOLVENCY ACT (III OF 1907), s 47 . **I. L. R. 39 All. 267**

——— **O. XXI, r. 72**—

See MORTGAGOR AND MORTGAGEE
I. L. R. 41 Bom. 357

——— **O. XXI, rr. 92, 93**—*Execution of*

chaser who has been deprived by means of a suit against the judgment debtor of the property purchased by him cannot obtain a refund of the purchase money without getting the auction sale set aside *Munna Singh* v *Gajadhar Singh*,

——— **O. XXI, r. 93**—*Civil Procedure Code (Act XIV of 1882), ss 313, 315—Auction sale under*

suit was maintainable, notwithstanding

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— **O. XXI, r. 93**—*concld.*

sions of O. XXI, r. 93 of the Civil Procedure Code (Act V of 1908). The plaintiff had a right of suit under the old Civil Procedure Code (Act XIV of 1882); and such right having accrued to him while such Code was in force it could not be affected by the provisions of the new Code of Civil Procedure (Act V of 1908) by virtue of the provisions of s. 6 (*c*) and (*e*) of the General Clauses Act (X of 1897). As the right of the plaintiff to make an application under O. XXI, rr. 91 and 93, would have been barred before the new Code came into force the new Code should not be so construed as to apply to the present case. *Mohideen Ibrahim* v. *Mahomed Mura Levai, 23 Mad. L. J. 487, Parvathi Ammal* v. *Govindasami Pillai, I. L. R. 39 Mad. 803,* followed. *Rustomji Ardeshir Irani* v. *Vinayak Gangadhar Bhat, I. L. R. 35 Bom. 29,* dissented from. *Colonial Sugar Refining Company* v. *Irving, [1905] A. C. 369,* applied. *Abbott* v. *Minister for Lands, [1895] A. C. 425,* distinguished. *Gopeshwar Pal* v. *Jiban Chandra Chandra, I. L. R. 41 Calc. 1125,* followed. TIRUMALAISAMI NAIDU *v.* SUBARMANIAN CHETTIAR (1916).

I. L. R. 40 Mad. 1009

——— **O. XXII, r. 4**—*Partnership—Suit for dissolution—Death of defendant after preliminary decree—Application for substitution—Limitation.* In a suit for dissolution of partnership, after the preliminary decree was passed, one of the defendants died. Some two years after his death the plaintiff applied for substitution of the name of the heir of the deceased defendant, and asked the Court to proceed with the suit. *Held,* that in the circumstances O. XXII, r. 4 of the Code of Civil Procedure applied and the application was too late. *Jamnadas Chhabildas* v. *Sorabji Kharsedji, I. L. R. 16 Bom. 27,* followed. MOTI LAL *v.* RAM NARAYAN (1917) . . . . **I. L. R. 39 All. 551**

——— **O. XXIII, r. 1 and s. 107 (2)**—*Whether an Appellate Court has power to allow the withdrawal of the suit with liberty to file a fresh suit.* *Held,* by the Full Bench, that it is open to an Appellate Court in proper cases, when reversing the decree of the lower Court, to give the plaintiff leave to withdraw the suit, with liberty to file a fresh suit. *Choragudi China Kotayya* v. *Raja Varadaraja Appa Row, 27 Mad. L. J. 244,* overruled. KAMAYYA *v.* PAPAYYA (1916).

I. L. R. 40 Mad. 259

——— **O. XXIII, r. 3**—*Order recording petition of compromise—Jurisdiction of Court to decide whether suit has been settled out of Court when one party denies the settlement—Absence of authority of persons negotiating compromise.* There can be no doubt that when one party alleges, and the other denies, that a suit has been settled by a lawful agreement out of Court, the Court has power to decide whether there has been such a settlement and if this question is decided in the affirmative to grant a decree in accordance with the agreement. The Full Bench decision in *Broja Durlabh Sinha* v. *Romanath Ghose, I. L. R. 24 Calc. 908: s. c. 1 C. W. N. 597,* has been now given effect to by the alterations made from the language of s. 375 of the Civil Procedure Code of 1882 in O. XXIII, r. 3 of the Code of 1908. In this case the High Court on a consideration of the circumstances set aside the order of the lower Court recording a petition of compromise on the ground that none of

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— **O. XXIII, r. 3**—*concld.*

the persons who took part in the negotiations were authorized to effect a compromise that was binding on the parties to the suit. ANADI KRISHNA DUTT *v.* PRIYA SHANKAR MAJUMDAR (1916).

21 C. W. N. 366

——— **O. XXVI, rr. 9, 16, 17, 18**—*Agra Tenancy Act (II of 1901), s. 164—Suit for profits—Commissioner appointed to report as to actual collections—Evidence—Admissibility of report.* *Held,* that the report of a commissioner appointed by a Court of Revenue to ascertain the amount of actual collections in a suit for profits under s. 164 of the Agra Tenancy Act is admissible in evidence having regard to rr. 9, 16, 17, 18 of O. XXVI of the Code of Civil Procedure. BAKHTAWAR LAL *v.* SHEO PRASAD (1917).

I. L. R. 39 All. 694

——— **O. XXXIII, r. 8**—*Application to sue in forma pauperis not determined—Attachment before judgment, if may issue.* No order of attachment before judgment can be made at the instance of a person who has applied for leave to sue *in forma pauperis* before his application has been judicially determined in his favour. O. XXXIII, r. 8, clearly shows that there is no suit in existence until [illegible] to sue *in forma pauperis* has been [illegible] CHANDRA CHABRI *v.* TARA PRAS[illegible] . **21 C. W. N. 870**

——— **O. XXXIV, r. 5**—*Limitation Act (IX of 1908), Sch. I, Art. 181—Limitation—Decree for sale on mortgage—Appeal from preliminary decree—Application for decree absolute.* *Held,* that in a suit for sale on a mortgage, if an appeal has been preferred from the preliminary decree, the decree which is to be made absolute is the decree of the final Court of Appeal. In such a case, therefore, limitation for an application for a decree absolute runs not from the expiry of the term fixed for payment by the original decree, but from the date of the decree of the final Court of Appeal. *Shohrat Singh* v. *Bridgman, I. L. R. 4 All. 376, Muhammad Sulaiman Khan* v. *Muhammad Yar Khan, I. L. R. 11 All. 267,* and *Abdul Majid* v. *Jawahir Lal, I. L. R. 36 All. 350,* referred to. *Madho Ram* v. *Nihal Singh, I. L. R. 38 All. 21,* overruled *quoad hoc.* GAJADHAR SINGH *v.* KISHAN JIWAN LAL (1917).

I. L. R. 39 All. 641

——— **O. XXXIV, r. 8**—*Suit for redemption—Decree modified in appeal—Application to postpone day fixed for payment.* *Held,* that the power given by the proviso to O. XXXIV, r. 8 of the Code of Civil Procedure, 1908, is a power exercisable by the Court which has to execute the decree. Hence in the case of a decree passed by an Appellate Court an application for postponement of the day fixed for payment must be made to the Court of first instance, and not to the Court which passed the decree. *Ram Dhani Sahu* v. *Lalit Singh, I. L. R. 31 All. 328,* and *Dharmaraja Ayyar* v. *K. G. Srinivasa Mudaliar, I. L. R. 39 Mad. 876,* followed. BENI PRASAD *v.* HARNAM DAS (1917).

I. L. R. 39 All. 396

——— **O. XXXIV, r. 14**—*Transfer of Property Act (Act IV of 1882), s. 68—Execution of decree—Decree against heirs of deceased debtor—Execution sought against property once subject to a mortgage which had become time-barred.* *Held,* that

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd*

——— **O. XXXIV, r. 14**—*concld*

a decree in a suit under s 68 of the Transfer of Property Act, 1882, against the heirs of a deceased mortgagee, as such heirs, for payment of money originally due under a mortgage, which, how ever, had become unenforceable by lapse of time,
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gage,
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Madho Prasad v *Debi Dial, All W N*, 1891, page 168, *Arunachalam Chetti* v *Ayyaiayyan, I L R 21 Mad 476, Khub Chand* v *Kalian Das, I L R 1 All 240, Ponnappa P llai* v *Pappuvay yangar, I L R 4 Mad 1, Ganesh Singh* v *Devi Singh, I L R 32 All 377, Madho Prasad Singh* v *Baij Nath, All W N*, 1905, page 152, *Kish*
and
264,
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——— **O. XXXVIII, r 5, ss. 115, 145**—*Attachment before judgment—Surety for defendant—Death of defendant before hear ng—Legal represent ative brought on record—Application by surety for discharge, whether premature* The petitioner plaint iff having obtained an attachment before judg ment against the defendant the opponent stood surety for the defendant whereupon the attach ment was raised The defendant died before the hearing of the suit and his widow was

therefore, applied to the High Court in revision *Held*, that the order of the Court discharging the surety was premature and should be set aside under s 115 of the Civil Procedure Code, 1908, as the proceedings had not come to an end, because they had been revived by the substitution of the widow of the defendant and the stage had not been reached at which the liability of the surety could be decided CHANDULAL DALSUKHRAM *v* JESHANGBHAI CHHOTALAL (1917)
I L R. 41 Bom. 402

——— **O. XL, r. 1**—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s 60 *(1)*
I L R. 40 Mad. 302

——— **O. XL, r. 1, and O. XLIII, r 1**—

See RECEIVER . **I L. R. 40 Mad 18**

——— **O. XLI, r. 4**—

See HINDU LAW—ADOPTION
I L. R 40 Mad. 846

——— **O. XLI, r. 21**—*Appeal decided ex parte—Application by respondent for rehearing—Non appearance of counsel for respondent due to*

struct counsel but after a time took away the papers so that counsel was unable to appear, and the consequence was that the appeal was decreed

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd*

——— **O. XLI, r. 21**—*concld*

ex parte *Held*, that this misconduct on the part of the agent afforded his principal no ground for applying for rehearing of the appeal *Har Prasad* v *Abdul Rahman, All W. N*, 1905, page 44, referred to BAJI LAL *v* NAWAL SINGH (1917)
I L. R. 39 All. 388

——— **O. XLI, r. 23**—*Remand—Preliminary point—Issues framed and evidence taken, but suit decided upon one issue only* *Held*, that it is competent to an Appellate Court to remand a case under O XLI, r 23 of the Code of Civil Procedure, 1908, where the Court of first instance having framed issues and recorded all the evidence has decided the suit with reference to its finding upon one of the issues framed by it, leaving the other issues undecided *Mata Din* v *Jamna Das, I L R 27 All 691*, followed KAMTA *v* PARBHU DAYAL *(1916)* **I. L. R. 39 All 165**

——— **O. XLI, r. 33**—

See HINDU LAW—GIFT
I. L R. 40 Mad 818

——— **O XLVII, r 1**—*Review of decree not appealed against* On a proper construction of O XLVII, r 1 *(1)* the decree mentioned therein means a decree from which no appeal has been preferred by the applicant for review himself That there is no implied reference to O XLI, r 4 in O XLVII, r 1 (2), the effect of which is to restrict the right which would otherwise be pos sessed by one defendant to apply to review of judgment,
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ency of an appeal by a co defendant except in

which he seeks review CHANDRA KANTO BHATTA-CHARJA *v* LAKSHMAN CHANDRA CHAKRAVARTY (1916) . **21 C. W. N. 430**

——— **Sch II, Paras 15, 16**—*Arbitration—Agreement to refer pending suit—Agreement not made by all the parties to the suit—Award—Objection to validity of agreement to refer—Revision* Out of twenty one defendants sixteen joined with the plaintiff in an application to refer the matter in the suit to arbitration Of the remaining five defendants, three had not entered an appearance, and the Court had already passed an order that the case would be proceeded with *ex parte* as to them and as to the remaining two the plaintiff abandoned his claim against them A reference was made and an award was delivered for payment of a sum of money by one of the defendants alone, and a decree followed in accordance with the award *Held*, that there was a valid order of reference, or

16 of the second schedule to the Code of Civil

COMPANIES ACT (VII OF 1913).

——— s 38—*Purchase of share at a Court sale—Rectification of register—Power of Court—Director's power to refuse to register a Court purchaser as a shareholder—Court's power to interfere with the discretion—Appeal to the High Court—Practice* A purchaser of shares of a limited company at a Court sale is not entitled as of right to have his name entered in the register of the company as a shareholder He is subject to the

there may be no obscurity on the point and no room for the argument that there was no issue directed to be tried and consequently no right of appeal MANILAL BRIJLAL v GORDHAN SPINNING AND MANUFACTURING COMPANY (1916)

I. L. R. 41 Bom. 76

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having been held it is necessary, in the first instance to show with reference to the provisions of s 76 of the Act that the accused who was an officer of the company was knowingly a party to the default in holding the general meeting and where that question has not been inquired into at all the case has not been properly tried and the conviction cannot stand RAJ KUMAR KUSARI v KING EMPEROR (1917) . **21 C W. N. 840**

any profits, and that the applicants themselves were apprehensive that, if the company continued to work, loss instead of gain would result On the other hand it was not apparent either that the substratum of the company was gone or that the company was conceived and brought forth in fraud *Held*, that the applicants had failed to

I. L. R. 39 All. 334

——— ss. 207 (ii), 208—*Voluntary winding up—Appointment of liquidator—Liability of liquidator acting under irregular appointment* A person *who accepts an appointment as liquidator of a* company which is being voluntarily wound up, and who acts as such, must, whether his appointment is regular or not, carry out the duties, as

COMPANIES ACT (VII OF 1913)—*concld.*

well as exercise the rights, of a liquidator and must make a return of his appointment to the Registrar of Joint Stock Companies as provided by *s.* 203 *of the Indian Companies Act, 1913,*

1913, to delegate to the directors of the company the appointment of a liquidator EMPEROR v. SATISH CHANDRA GHOSH (1917)

I. L. R. 39 All. 412

COMPANY.

See COMPANIES ACT (VII OF 1913), s 162 . **I. L. R. 39 All. 334**

See SET OFF **I. L. R. 40 Mad. 1004**

——— winding up of—

See COMPANIES ACT (VII OF 1913), ss. 207 (ii), 208 . **I L. R. 39 All. 412**

COMPENSATION.

——— for loss of crops by theft or cattle—

See ESTATES LAND ACT (MAD I OF 1908), ss 4, 27, 73, 143

I. L. R 40 Mad. 640

to the demolition of the fixtures Until the removal is effected no damage at all is, in fact, suffered S 617, 'where any municipal authority . is required by . this Act to pay . compensation, the amount to be so paid, and, if necessary, the apportionment of the same shall in case of dispute be determined by the Court of Small Causes", includes a claim for compensation by a person against the Corporation for removal of fixtures, although the amount exceeds the ordinary jurisdiction of the Small Cause Court In a suit in the Court of a Subordinate Judge by the appellants against the Corporation for compensation for

their compulsory removal, (c) that the Corporation could not remove the fixtures until reasonable compensation had been paid, (d) asked the Cou

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the suit, giving compensation It was dismissed, as being premature (under s 341) and not cognizable by the Subordinate Judge (under s 617) by

COMPENSATION—*concld.*

the High Court where the Corporation, though they had denied the fact in their written statement, admitted that the fixtures had all been erected before 1st June, 1863. *Held*, by the Judicial Committee, that the decree of the High Court though correct in substance was incorrect in form and their Lordships amended it by adding to it declarations that the appellants were entitled to relief in terms of (*a*) and (*b*) of the prayer of their plaint, the rest of the suit remaining dismissed. JOSEPH *v.* CORPORATION OF CALCUTTA (1916).
I. L. R. 44 Calc. 87

COMPLAINT TO MAGISTRATE.

See SANCTION FOR PROSECUTION.
I. L. R. 44 Calc. 650

COMPROMISE.

——— **by pardanashin guardian—**

See HINDU LAW—PARTITION.
L. R. 44 I. A. 229

1. ——— *Minor—Court of Wards, compromise by, on behalf of minor ward, whether subject to sanction of Civil Court—Court of Wards Act (Beng. IX of 1879), ss. 18, 51—Civil Procedure Code (Act XIV of 1882), ss. 462, 464.* The sanction of the Civil Court (required by s. 462 of the Civil Procedure Code of 1882) is not necessary for a compromise entered into under the authority and by the direction of the Court of Wards on behalf of a minor under their charge. NAKIMO DEWANI *v.* PEMBA DITCHEN (1917).
I. L. R. 44 Calc. 829

2. ——— *Petition of compromise reciting a verbal mortgage in a proceeding prior to Transfer of Property Act (IV of 1882)—Destruction of record, suit to redeem mortgage after—Certified copy of petition, if admissible and if constitutes mortgage document—Petition, if should be stamped—Copy bearing one-rupee stamp—Original petition, if must have been stamped with one-rupee stamp—Court-fees Act (VII of 1870).* On April 1st, 1857, the parties to a suit filed a petition of compromise reciting the terms on which the dispute was settled, among them being an agreement by one party who was recognized as owner to grant a usufructuary mortgage to the other. The Judge ordered the compromise to be placed on the record and the case to be put up for final disposal on the following day. The record of the proceedings having been destroyed, in the present suit for redemption of the mortgage a certified copy of the petition bearing a stamp of Re. 1 only was produced as evidence of the agreement: *Held*, that the certified copy was rightly admitted in evidence relative to the facts recited therein. That the suit was not brought on the petition, but on an antecedent verbal mortgage, valid according to the law in force before the Transfer of Property Act; and did not depend upon whether the petition was fully stamped or not. That if the Judge did pass his formal order as he proposed to do, no objection could be taken on the ground of the stamp on the petition being insufficient. That no inference could be drawn from the copy bearing a one-rupee stamp (which was the proper stamp for issuing a copy under the Court-fees Act of 1870) that the original petition (if it be treated as the document creating the mortgage) was not properly stamped. AHMAD RAZA *v.* SAIYID ABID HUSAIN (1916).
21 C. W. N. 265

COMPROMISE DECREE.

——— **effect of—**

See MUTT . . **I. L. R. 40 Mad. 177**

COMPULSORY ACQUISITION.

See LAND ACQUISITION.
I. L. R. 44 Calc. 219

CONDITIONAL ORDER.

See OBSTRUCTION.
I. L. R. 44 Calc. 61

CONDONATION.

See DIVORCE . **I. L. R. 44 Calc. 1091**

CONSCIOUS POSSESSION.

See COUNTERFEIT COIN.
I. L. R. 44 Calc. 477

CONSEQUENTIAL RELIEF.

See COURT-FEE . **I. L. R. 44 Calc. 352**

CONSIDERATION.

See CONSTRUCTION OF DOCUMENT.
I. L. R. 41 Bom. 5

——— **failure of—**

See BILL OF EXCHANGE.
I. L. R. 41 Bom. 566

See LIMITATION ACT (IX OF 1908), SCH. 1, ART. 97 . **I. L. R. 41 Bom. 31**

CONSPIRACY.

See DAMAGES . **I. L. R. 41 Bom. 137**

CONSTRUCTION.

See POWER-OF-ATTORNEY.
I. L. R. 41 Bom. 40

See WILL . . **I. L. R. 44 Calc. 181**

CONSTRUCTION OF DEED.

——— *Intention of parties—Position of the parties and position of affairs at the time of the agreement to be considered—Predeceased son's widow, ekrarnama with, of legal heir—Property given, whether absolute or limited estate—Absolute right or given for maintenance—Hindu Widows' Remarriage Act (XV of 1856), s. 2, remarriage of widow, if causes forfeiture of the property—If the section applies in the cases of widows who according to their caste rules are permitted to remarry—Father-in-law's property, the husband having predeceased, if comes within the category of 'deceased husband's property' within the meaning of s. 2 of the Act.* A, a Hindu governed by the Mitakshara law, died leaving a daughter B, and two predeceased sons' widows, C and D. After A's death, the daughter B, and the two widows, C and D, to settle family differences, executed an *ekrarnama* and divided the property left by A into three equal shares, the property in C's share being a house, which she let out to a tenant. Subsequently, the widow C remarried. The present suit was brought by the widow C for declaration of title to, and for possession of, the house and for arrears of rent. Plaintiff alleged that by the family arrangement (*viz.*, the *ekrarnama*) she got an absolute estate, whereas defendants pleaded that she had got only a life interest by way of maintenance, which interest, too, was forfeited on her remarriage. *Held, per* SANDERSON, *C.J.*—In construing the deed the Court has to take into consideration the position of the parties who

CONSTRUCTION OF DEED—*concld*

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would be maintained during his life the obligation to maintain her out of that property continued after his death, when the property passed by survivorship, and the property passed to the de f ... No 3 (the daughter), subject to the plaint

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contended for by both the parties then that con struction should be adopted which is consistent with the law to which the parties are subject The
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because the plaintiff, according to the custom of the caste to which she belongs, could have remar ried independen ... the Act is of no practical importance, as
law a widow
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belongs would forfeit any interest ...
in the husband s estate on her remarriage The plaintiff, therefore, forfeited her interest in the property to the extent she obtained it by way of maintenance MAHAMMAD UMAR *v* MAN KUAR (1917) . . . . . . 21 C. W. N. 906

CONSTRUCTION OF DOCUMENT.

See CIVIL PROCEDURE CODE (1908), O 11, R. 2, O XXXIV, RR 2, 4
I. L. R. 39 All. 506

See HINDU LAW—ENDOWMENT
I. L. R. 39 All. 553

See MAHOMEDAN LAW—GIFT
I. L. R. 41 Bom. 372

CONSTRUCTION OF DOCUMENT—*concld*

See TRANSFER OF PROPERTY ACT (IV OF 1882), s 58 . I. L. R. 39 All. 244

———— *Sale of houses in*
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1911 Soon after his death ...
possession of the houses The plaintiff, having sued to recover possession, the lower Courts dis missed the suit on the grounds that the sale of 1898 was a sham and supported by no consider ation and that the claim was barred by limitation On appeal *Held*, that the deed of 1898 was on the face of it a document of advancement and needed no consideration *Held, also*, that the *possession of the house by the plaintiff s husband up to 1911 being permissive, the plaintiff was in* constructive possession of it, and her claim was, therefore, not barred by limitation IBRAHIM BHURA *v* ISA RASUL (1916)
I. L. R. 41 Bom. 5

———— *Will—Dedication*
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by, but the rest of the property was assigned to the maintenance of the heirs of the testator gener ation after generation The income of the pro perty was about Rs 7,000 annually, but the *customary expenses of the religious rites and ceremonies amounted to only some Rs 500 per annum*
... of the will that it created

perty *Sonatun Bysack* v *Sreemutty* ... *soondre Dosee, 8 Moo I A 66*, and *Ashutosh Dutt* v *Doorga Churn Chatterjee, I L R 5 Calc 438*, referred to SURJA KUNWARI *v* HAR NARAIN RAM (1917) . I. L. R. 39 All. 311

CONSTRUCTION OF STATUTES.

See STATUTES, CONSTRUCTION OF

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if not in theory, bound by the decision of the English Court of Appeal RAMENDRA NATH RAI *v* BROJENDRA NATH DASS (1917)
21 C. W. N. 794

CONSTRUCTION OF WILL.

See WILL, CONSTRUCTION OF
I. L. R. 41 Bom. 70

CONTEMPT OF COURT.

See PROFESSIONAL MISCONDUCT.
I. L. R. 44 Calc. 639

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CONTEMPT OF COURT—*contd.*

of printer and publisher of newspaper, irrespective of knowledge of contents of offending publication—Summary jurisdiction in respect of contempt, when should be exercised—Civil and criminal contempt, distinction between—Contempt by attack on Court, criminal, nature of—Rule of interpretation applicable to writing constituting contempt—Evidence Act (I of 1872), s. 74—Returns filed with Registrar of Joint Stock Companies, if public document and secondary evidence thereof is admissible—Onus on party producing certified copy to prove execution of document—Liability for contempt of director of limited company owning newspaper—Proceeding in contempt, if lies against Corporations—Necessity of legislation for the registration of editors of newspapers. In a suit decided in the Original Side of the High Court the trial Judge (GREAVES, *J.*) held that the Calcutta Improvement Trust had power to acquire land compulsorily for the purpose of recoupment. In an appeal against a decision of the Subordinate Judge of 24-Parganahs two Judges of the Court (MOOKERJEE and CUMING, *JJ.*) sitting as a Division Bench on the Appellate Side held that the Trust had no such power. When the appeal against the decision of the single Judge in the Original Side was ready for hearing the following two articles appeared in the "Amrita Bazar Patrika" newspaper in two of its issues:—(i) "There is a mischievous rumour afloat which should be contradicted. It is stated that a vigorous attempt is being made to get up a Bench to consider the appeal on the judgment of Mr. Justice Greaves in connection with the acquisition of surplus land by the Calcutta Improvement Trust according to somebody's choice. We do not believe that it is possible for anyone, far less the Chairman of the Trust, to secure a Bench after his own heart as a counterpoise to the Mookerjee and Cuming Bench. We are sure the interest of every ratepayer is safe in the hands of the Hon'ble Judges and we do not think that any official of the Trust can go so far". (ii) "Something like consternation prevails on account of the proposed new constitution of the Appellate Bench of the Calcutta High Court before which appeals against the awards of the Improvement Trust are to be heard. It is known to the reader how this Bench was originally composed of Sir Asutosh Mookerjee and the Hon'ble Justice Cuming, and how, latterly, it has come to be presided over by the Hon'ble the Chief Justice and Mr. Justice Woodroffe. Rumour has it that for purposes of hearing Improvement Trust appeals the Bench is going to be strengthened by the appointment of Mr. Justice Chitty. Now what neither the public nor ourselves can understand is this special arrangement for such a Special Bench. If it is contended that two Hon'ble Judges of the highest Court in the land are incompetent to decide in appeal cases in which the Improvement Trust is concerned, a contention, however, which we do not believe the Chief Justice will care to advance, why should there be a Special Bench of three, and not a Full Bench of five, on which at least two Indian Judges could find seats? As a matter of fact, as landowners in Calcutta are mostly Indians, and as Indian Judges are likely to know more of the conditions, practices, etc., prevailing here, it is but meet that the Appellate Bench in the present circumstances should be so composed as to associate Indian Judges with their European colleagues. The withdrawal of Sir Asutosh has given rise to unsavoury impressions in the public mind since this proposed arrangement is to follow close upon the heels of his judgment in the case of *The Improvement Trust* v. *Chandra Kanta Ghosh, 21 C. W. N. 8.* Be that as it may, we have perfect faith in the present Chief Justice and believe that as soon as Sir Lancelot Sanderson understands the public feeling in the matter his Lordship will rather form a Full Bench, or at least associate an experienced Indian Judge with himself, for the hearing of Improvement Trust appeals". Proceedings in contempt were taken against the printer and publisher of the newspaper and the directors and manager and secretary of the company called "The Amrita Bazar Patrika Co., Ltd." to which the newspaper belonged in respect of the said two articles: *Held*, that the articles constituted a contempt of Court not only on the ground that they scandalized the Court, but also on the ground that they were calculated to prejudice a litigant and interfere with the due course of justice. That the High Court in the Indian Presidencies are Superior Courts of record. The offence of contempt of Court and the power of the High Court to punish it are the same in such Courts as in the Superior Courts in England. It has the power of summarily punishing for contempt out of Court in relation to any of its jurisdictions. That the jurisdiction to punish for contempt is not obsolete. That the printer and publisher of a newspaper is liable for contempt even though he was not aware of the subject constituting such contempt. Necessity of legislation for the registration of the editor of a newspaper pointed out and what constitutes contempt of Court discussed. *Held, per* SANDERSON, *C.J.*—That the jurisdiction which the Court has in respect of a contempt of Court should be exercised with great care, and should only be exercised when the case is beyond all reasonable doubt, and this should especially be the case when the proceedings are at the instance of the Court itself. That the question was not whether the article, in fact, obstructed or interfered with the due course of justice, but whether it was calculated to obstruct and interfere with the due course of justice. *Per* WOODROFFE, *J.*—That all proceedings, whether in respect of civil or criminal contempts, are of a criminal nature when their object is to punish by fine or imprisonment, but the procedure in such cases is not in all respects the same as in an ordinary criminal case. Both the offence, as also the jurisdiction and procedure under which it is tried, are *sui generis*. As regards the standard of proof there is but one rule of evidence which in India applies to both civil and criminal trials and that is contained in the definition of "proved" and "disproved" in s. 3 of the Evidence Act. Whether the case is civil or criminal a fact is only proved or disproved if it comes within the terms of that section. *Per* MOOKERJEE, *J.*—That a criminal contempt is conduct that is directed against the dignity and authority of the Court. A civil contempt, on the other hand, is failure to do something ordered to be done by a Court in a civil action for the benefit of the opposing party therein. Consequently, in the case of a criminal contempt the proceeding is for punishment of an act committed against the majesty of the law and as the primary purpose of the punishment is the vindication of the public authority the proceeding conforms as nearly as possible to proceedings in criminal cases. In the case of a civil contempt, on the other hand, the proceeding, in its initial stages at least,

CONTEMPT OF COURT—*contd.*

when the purpose is merely to secure compliance with a judicial order made for the benefit of a litigant, may be deemed instituted at the instance of the party interested and thus to possess a civil character But here also refusal to obey the order of the Court may render it necessary for the Court to adopt punitive measures

sists in an attack upon the Court the proceedings instituted to vindicate its dignity are of a criminal nature, even though the attack has been made in connection with civil suits or appeals either actually

the offending words as they stand and to attach to the words used their natural meaning without the assistance of a laborious commentary It is incumbent on the Court in all cases to consider the general tone of the writing The meaning and intent are to be determined by a fair interpretation of the language used and are matters of law for the Court as to whether or not they constitute contempt Disclaimer on the part of the publisher as to any intentional disrespect to the Court is, conse

astute to read into it a sinister import But if the intent is fairly clear liability to punish for contempt of Court cannot be successfully evaded by the use of a transparent artifice That the two articles relating to the same topic and published in the editorial columns of the same newspaper at a brief interval of time between them might legitimately be read together to determine their scope and purpose even though they were proved not to have been written by the same person *Per* WOODROFFE and MOOKERJEE, *JJ.*—That the returns in the custody of the Registrar of Joint Stock Companies constitute public records of private documents within the meaning of s 74 sub s (2) of the Evidence Act, and secondary evidence thereof is admissible under s 65, cl (e) *Per* MOOKERJEE, *J*—That although secondary evidence may be admissible, the party who produces the evidence is not relieved of his obligation to prove the execution of the document just as if the original had been produced unless the case is covered by s 90 of the Evidence Act or the legislature has expressly provided that the document or endorsement thereon is receivable in evidence without proof of execution *Per* MOOKERJEE, *J*—That the statement in the affidavits of two of the defendants could not be used to the detriment of the other defendants as the proceeding was in the nature of a criminal trial and supplementary evidence could not be given so as to prejudice the defendants *Per* MOOKERJEE, *J*—That it cannot be held as a matter of law that the directors of a limited company which owns a newspaper are liable to be committed for contempt of Court on account of a libel published in the paper *Per* WOODROFFE, *J*—That the question whether persons in the position of directors are responsible

CONTEMPT OF COURT—*contd*

is by attachment of the person, followed by fine or imprisonment or both, in the case of Corporations the process is by fine, followed by sequestration or distraint The Court sentenced the printer and publisher to pay a fine of Rs 300 and discharged the other defendants in the absence of proof of their complicity with the publication of the offending articles *In the matter of the* AMRITA BAZAR PATRIKA (1917) . **21 C. W. N. 1161**

CONTRACT.

See CONTRACT OF GUARANTEE

See CONTRACT OF SERVICE

———— **breach of—**

See LOSS OF GOODS

I. L. R. 44 Calc. 16

———— **construction of—**

See MORTGAGE **I. L. R. 44 Calc. 542**

———— *Agreement for carriage of goods by rail—Risk note—Liability of company for goods consigned on a risk note—Burden of proof.* Where goods are booked for carriage by railway under a "risk note" and are lost in transit it lies upon the consignor claiming damages against the railway company to show that the loss was occasioned by the theft or wilful neglect of the company's servants. *Sheobarat Ram* v *The Bengal and North-Western Railway Company, 16 C W N 766*, referred to *Bengal and North Western Railway Company* v *Haji Mutsaddi, 7 All L J 833*, distinguished EAST INDIAN RAILWAY COMPANY *v* NATHMAL BEHARI LAL (1917)

I. L. R. 39 All. 418

CONTRACT ACT (IX OF 1872).

———— **ss. 1, 118**—*Evidence Act (I of 1872), s 92—Contract for sale and purchase of piece-goods to be manufactured according to sample—*

order—Goods tendered different in quality and design from sample—Contract providing for reference to arbitration—Power of arbitrators to award an allowance in price when difference in quality not unreasonable—Parties requesting arbitrators to award an allowance bound by the award—Custom of the trade permitting allowance if the difference in quality not unreasonable—Custom cannot vary written contract In September and October, 1913, the defendants entered into seven contracts with the plaintiffs, referred to under the letters A to G, for the sale and delivery of piece goods of certain specified descriptions The contracts provided for delivery

goods from the defendants' premises or sign the delivery order acknowledging that the goods had been taken delivery of and the price debited to them, in which case the goods remained with the defendants at the risk of the plaintiffs. The goods were subsequently cleared by the plaintiffs at their convenience on payment of the price, interest thereon at 9 per cent, warehouse rent, and all other charges. A common feature of all the con-

CONTRACT ACT (IX OF 1872)—*contd.*

——— **ss. 69, 70**—*concld.*

of a share of a *putni* of the whole rent due on the *putni* to save it from being sold in execution of a decree obtained by the landlord in a suit for arrears of rent brought against some only of the *putnidars* comes within ss. 69 and 70 of the Contract Act. Where, after an order under s. 171 of the Bengal Tenancy Act was made in favour of such a *darputnidar*, one of the *putnidars* who was not a party to the landlord's suit for rent sued for a declaration and injunction that his right in the property was not affected thereby and the Court below decreed the suit and granted the injunction but made it conditional on the *putnidar* paying to the *darputnidar* the amount of rent proportionate to his share of the *putni*. *Held*, that the order making the injunction conditional was proper. RAJANI KANTO MONDAL *v.* HAJI LAL MAHOMED (1917).

21 C. W. N. 628

2. ——— *"Lawful payment", what is—"Interested in paying", who are—Deposit of decretal amount to prevent rent-sale by person claiming under a forged mortgage-bond —Sale set aside—Tenant, if liable to repay by reason of "benefit" received—Bengal Tenancy Act (VIII of 1885), s. 171 (3)—"Interest voidable on sale".* Plaintiff, alleging to be mortgagee of a tenancy which was about to be sold in execution of a rent decree, proceeded to deposit the decretal amount under s. 170, cl. (*3*) of the Bengal Tenancy Act, whereupon the tenant challenged his right to do so on the ground that the alleged mortgage was a forged document. The executing Court accepted the deposit, but without deciding the question of the genuineness of the mortgage. In a suit by the plaintiff to recover the amount paid it was found that the mortgage was not genuine. *Held*, that the plaintiff was not a person having an interest in the tenancy which was voidable on the sale within s. 170, cl. (*3*) of the Bengal Tenancy Act, nor was he interested in the payment of the money within the meaning of s. 69 of the Contract Act, nor was the payment lawful within the meaning of s. 70 of that Act. That the plaintiff was also not entitled to recover on the ground of defendant having benefited by the payment since it is not in every case in which a man has benefited by the money of another that an obligation to repay that money arises; there must be an obligation, express or implied, to repay. PANCHKORE GHOSE *v.* HARIDAS JATI (1916) . . . . **21 C. W. N. 394**

——— **s. 72**—*Coercion—Money paid to stifle a pending non-compoundable criminal prosecution—Suit to recover, maintainability of.* Money obtained from the plaintiff by the defendant under an agreement to stifle a pending non-compoundable criminal prosecution is money paid under "coercion" within the meaning of s. 72 of the Indian Contract Act, and can be recovered back. The maxim *in pari delicto potior est conditio defendentis* does not apply to such a case. *Willimams* v. *Hedley, 8 East, 738, Unwin* v. *Leaper, 1 M. & G. 747,* and *Atkinson* v. *Denby, 6 H. & N. 778,* followed. *Kanhaya Lal* v. *National Bank of India, Limited, I. L. R. 40 Calc. 598,* referred to. The fact that the money was actually paid as the result of an arbitration is immaterial if the plaintiff's consent to the arbitration was obtained by means of the prosecution. MUTHUVEERAPPA CHETTY *v.* RAMASWAMI CHETTY (1915) . . . **I. L. R. 40 Mad. 285**

CONTRACT ACT (IX OF 1872)—*concld.*

——— **s. 73**—*Contract to sell immovable property belonging to himself and minor members by manager of a joint Hindu family —Breach of contract—Damages against manager, recoverable—English rule on the subject not applicable—Transfer of Property Act (IV of 1882), s. 55 (2), applicability of, to executory contracts.* *Held* by the Full Bench:—A manager of a joint Hindu family who has agreed to sell immovable proprerty belonging to himself and the minor members of the family is personally liable under s. 73 of the Indian Contract Act (IX of 1872) for damages for failure to perform the contract when it is found that it is not binding on the minors. *Gas Light and Coke Company* v. *Towse, 35 Ch. D. 519,* not followed. The law in India as laid down by the Indian Contract Act as to the right to damages for breach of contract to sell immovable property is different from that in England. Knowledge of the purchaser of the defect of title in his vendor does not affect his right to recover damages. *Per* ABDUR RAHIM, *J.* (SADASIVA AYYAR, *J., contra*).—S. 55 (*2*) of the Transfer of Property Act is applicable also to cases of executory contracts. ADIKESAVAN NAIDU *v.* GURUNATHA CHETTI (1916).

I. L. R. 40 Mad. 338

——— **s. 81**—

See JUTE . . **I. L. R. 44 Calc. 98**

——— **ss. 108, 178**—

See LIMITATION ACT IX 9 OF 1908), ARTS. 48, 49 . . **I. L. R. 40 Mad. 678**

——— **ss. 126, 128**—

See PRINCIPAL AND SURETY.

I. L. R. 44 Calc. 978

——— **s. 226**—

See NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881), *s.* 27.

I. L. R. 40 Mad. 1171

CONTRACT OF GUARANTEE.

See PRINCIPAL AND SURETY.

I. L. R. 44 Calc. 978

CONTRACT OF SERVICE.

See SCHOOLMASTER.

I. L. R. 44 Calc. 917

CONTRACT (VOID).

See NORTH-WESTERN PROVINCES RENT ACT. (XII OF 1881) . **I. L. R. 39 All. 645**

CONTRACT WITH ALIEN ENEMY.

——— *Status of hostile firms—Common law doctrine —Trading licenses granted to hostile firms, their effect—Licenses granted to manager of a firm, not ultra vires—The Hostile Foreigners' Trading Order of 1914—The Indian Councils Act of 1861, s. 23—Act I of 1915—Interest made payable under contracts entered into before war—Suspension of interest after war—American cases, though not authoritative, noted on a novel point.* The existence of a state of war between the respective countries of the debtor and the creditor suspends the accrual of interest when it would ordinarily be recoverable as damages, and not as a substantive part of the debt, the reason being that a party should not be called upon to pay damages for retaining money which it was his duty to withhold. The accrual of interest is equally suspended, even when the alien

can safely be paid without the possibility of its enuring for the benefit of the enemy during the continuance of hostilities PADGETT v JAMSHETJI HORMUSJI (1916) . . I. L. R. 41 Bom. 390

CONTRIBUTION.

See MORTGAGE—EXONERATION
I. L R. 40 Mad. 968

See SALE FOR ARREARS OF REVENUE
I L. R. 44 Calc. 573

CONTROL.

——— inability of—

See SURETY . I L. R. 44 Calc. 737

CONVENIENCE AND EXPEDIENCY.

——— questions of—

See JURISDICTION OF HIGH COURT
I L. R. 44 Calc. 595

CONVERSATION.

——— between pleaders—

See EVIDENCE . I L. R. 44 Calc. 130

CONVEYANCE.

See EVIDENCE L. R. 44 I. A 236

CONVICTION.

See SEPARATE CONVICTIONS
I L. R. 39 All 623

CO-OWNERS.

See SALE FOR ARREARS OF REVENUE
I L. R. 44 Calc 573

CO-SHARERS

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901) s 118
I. L R. 39 All. 707

COSTS.

——— *Discretion as to costs*—

found that that discretion was not exercised on correct principles Persons who are in the position

management and by mutual consent the matter was referred by Court to the Assistant Referee of the Court for report and upon the report being made the *mutuallis* took exceptions to the report which were rejected by Court and the report was confirmed and the Court allowed only one set of

resulting from their taking exceptions as the exceptions were rightly rejected by the Court of first instance as unreasonable As the *mutuallis* succeeded in their appeal to a material extent, they, as well as the respondent trustees, were allowed

COSTS—*concld*

costs out of the estate AGA MD SHERAZI v SYED ALI MD SHOOSTRY (1916) . 21 C. W. N. 339

COSTS OF WIFE.

See DIVORCE . I. L. R. 44 Calc. 35

COUNSEL.

——— duties of—

See BARRISTER . I. L R. 44 Calc. 741

See EX PARTE CASE
I L. R. 44 Calc. 573

COUNTERFEIT COIN.

——— *Possession—Custody*—"*To become possessed*", *whether* ' *conscious posses-*

cl 26—Criminal Procedure Code (Act V of 1898), s 537 Per CURIAM To constitute an offence under s 243 of the Penal Code it is essential to prove that at the time the accused became possessed of the coin he knew it to be counterfeit, whether he was in possession of the coin himself, or his wife, clerk, or servant was in possession of the coin on his account As there was a misdirection to the Jury in a part of the Judge's summing up which related to a material and essential element of the charge the conviction should be set aside in review under cl 26 of the Letters Patent Per MOOKERJEE, J The term possession" has to be interpreted

sion and custody S 537 of the Criminal Procedure Code has no application to a case reviewed under cl 26 of the Letters Patent Mere non-direction is not necessarily misdirection *Rex v Stoddart, 2 Cr App Rep 217*, followed The Judge's note of his charge to Jury is conclusive *King Emperor v Upendra Nath Das, 21 C L J. 377 , 19 C W N 653*, referred to Per FLETCHER, J The point of time to be considered was the time when the accused had actual or conscious possession of the counterfeit coins for determining whet
coins
is a
and
account of another S 27, Indian Penal Code, does not express the complete thought of the legislature on the question of possession, and it is competent to the Court to interpret the words "to become possessed" in accordance with the meaning that the general law has given to them *In re Proceedings, 22nd December, 1866, 3 Mad H C R App xi*, referred to EMPEROR v FATEH CHAND AGARWALLA (1916) . I. L. R. 44 Calc. 477

COURT.

——— power of—

See INTEREST . I. L. R. 44 Calc. 162

COURT-FEE.

See APPEAL IN FORMA PAUPERIS
I. L. R. 40 Mad. 687

See CIVIL PROCEDURE CODE, s 115
I. L. R. 39 All. 723

1. ——— *Suit for declaration that entry in record-of rights a nullity, whether one for*

COURT-FEE—*concld.*

consequential relief—Specific Relief Act (I of 1877), Ch. VI, s. 12 Bengal Tenancy Act (VIII of 1885) s. 111A—Amendment or rejection of plaint—Civil Procedure Code (Act V of 1908), O. VII, r. 11—Court-fees Act (VII of 1870), Sch. II, Art. 17, cl. (iii), s. 7 (iv), cl. (c). Where a court-fee of rupees ten was paid in a suit purporting to be under s. 111A of the Bengal Tenancy Act, but the plaintiffs prayed for a declaration (*a*) that they were occupancy ryots, and (*b*) also that the entry in the record-of-rights showing them as tenure-holders was a nullity; and the plaintiffs on being required to supply the deficit court-fee on the second relief claimed failed to do so within the time fixed by the Court. *Held*, (i) that the second prayer being for a consequential relief was not such a declaration as was contemplated by the proviso to s. 111A; (ii) that the learned Judge had no alternative but to reject the plaint; and (iii) that the plaintiffs could not be allowed to amend the plaint by striking out the second prayer for relief as the provision of O. VII, r. 11 of the Civil Procedure Code was mandatory. MIDNAPUR ZEMINDARY COMPANY, LTD., *v.* SECRETARY OF STATE FOR INDIA (1916) . **I. L. R. 44 Calc. 352**

2. ———— *Court-fee on memorandum of appeal—Appeal from Order under s. 114 of the Civil Procedure Code (Act V of 1908)—Order, if comes under s. 47 (1) of the Code—Government Notification prescribing Court-fee of Rs. 2.* An order under s. 144 of the Civil Procedure Code comes under s. 47 (*1*) of the Code. Cl. (*6*) of the notification of the Government of India, No. 4650, dated 10th September, 1889, applies to appeals from such orders, and a Court-fee of Rs. 2 is chargeable on such appeals. MADAN MOHAN DE *v.* NOGENDRA NATH DE (1917).
21 C. W. N. 544

3. ———— *Suit for redemption of mortgage—Preliminary decree passed in two parts—Appeal.* The Court of first instance in a suit for redemption of a mortgage passed in effect two preliminary decrees. It first passed a decree declaring the plaintiffs' right to redeem, which was denied by the defendants, against which the defendants filed an appeal, and then, whilst the appeal was pending, a second preliminary decree deciding the amount for which redemption might take place. Against that decree also the defendants appealed. *Held*, that the two appeals were not to be regarded as separate appeals for the purpose of assessing the Court-fee, but should be counted as one. LALTA PRASAD *v.* SHEORAJ SINGH (1917).
I. L. R. 39 All. 452

COURT-FEES ACT (VII OF 1870).

———— **s. 7 (iv) (f), 11 ; Sch. II, Art. 17 (vi)**—

See ADMINISTRATION SUIT.
I. L. R. 44 Calc. 890

———— **s. 7, cl. (v) (*b*) and (*e*)**—*Assessed land—Cocoanut trees thereon—Suit for land and trees—Valuation of suit—Garden, meaning of.* In a suit to recover possession of assessed land on which cocoanut trees stand the valuation should be under s. 7, cl. (*v*) (*b*), and not under cl. (*v*) (*e*) of the Court-fees Act (VII of 1870). The word 'garden' in section 7, clause (*v*) (*e*) of the Court-fees Act (VII of 1870) should be taken as referring primarily to a garden in the English sense, that is, an ornamental or pleasure or vegetable garden attached to a house. *Andothodan Moidin* v. *Pullambath Mamally, I. L. R. 12 Mad. 301*, referred to. The conversion of an assessed arable field into a cocoanut tope does not affect the application of cl. (*v*) (*b*) of s. 7 of the Court-fees Act. *Venkayya* v. *Ramaswami, I. L. R. 22 Mad. 39* and *Murugesa Chetti* v. *Chinnathambi Goundan, I. L. R. 24 Mad. 421*, referred to. KULLAPA GAUNDAN *v.* ABDUL RAHIM (1916) . . **I. L. R. 40 Mad. 824**

COURT FEES ACT (VII OF 1870)—*concld.*

———— **s. 7**—*concld.*

———— **Sch. II, Art. 6**—*Stay of execution security bond for, how stamped—Court-fee or non-judicial stamp—Indian Stamp Act (II of 1899), Sch. I, Art. 15.* Bonds given as security in pursuance of the order of the Court for stay of execution must be written on paper properly stamped under the Indian Stamp Act (II of 1899). Such bonds cannot be written on plain paper bearing a Court-fee stamp of annas 8 only, as they are not made by order of the Court within the meaning of Art. 6 of Sch. II of the Court-fees Act. DWARKA NATH DEY *v.* SAILAJA KANTA MULLICK (1916).
21 C. W. N. 1150

———— **Sch. II, Art. 17 (iii), s. 7 (iv) cl. (*c*)**—

See COURT-FEE . **I. L. R. 44 Calc. 352**

———— **Sch. II, Art. 17 (iii)**—*Declaratory decree—Suit to have declared declaratory decree not binding on ground of fraud—Consequential relief—Court-fee, amount of.* A suit by the plaintiff to have it declared that a decree passed in a previous suit declaring that certain alienations were not valid was not binding on her is properly instituted on a Court-fee stamp of Rs. 10 only because no consequential relief is needed or sought for in it. BAGALA SUNDARI DEBI *v.* PROSANNA NATH MUKHERJI (1916) . . . **21 C. W. N. 375**

COURT OF WARDS.

See COMPROMISE.
I. L. R. 44 Calc. 829

———— **alienation by**—

See HINDU LAW—ADOPTION.
I. L. R. 40 Mad. 846

———— **management of widow's estate by**—

See HINDU LAW—ADOPTION.
I. L. R. 40 Mad. 846

COURT OF WARDS ACT (BENG. IX OF 1879).

———— **ss. 18, 51**—

See COMPROMISE.
I. L. R. 44 Calc. 829

COURT OF WARDS ACT (MAD. I OF 1902).

———— **s. 35**—

See HINDU LAW—REVERSIONERS.
I. L. R. 40 Mad. 871

COURT-SALE.

See COMPANIES ACT (VII OF 1913), s. 38
I. L. R. 41 Bom. 76

See MORTGAGOR AND MORTGAGEE.
I. L. R. 41 Bom. 357

CREDITOR.

See ADMINISTRATION SUIT.
I. L. R. 44 Calc. 890

CREDITOR—*concld*

See PROVINCIAL INSOLVENCY ACT (III OF 1907), ss 43 (2), 46
I. L R. 39 All 171

CRIMINAL APPEAL.

See PRIVY COUNCIL, PRACTICE OF
I. L. R. 44 Calc. 876

CRIMINAL BREACH OF TRUST.

See JURISDICTION
I. L. R. 44 Calc. 912

CRIMINAL MISAPPROPRIATION.

See JURISDICTION
I. L. R. 44 Calc. 912

CRIMINAL PROCEDURE CODE (ACT V OF 1898).

———— **s 35**—*Scope of—Section, if covers cases when different kinds of sentences are passed* S 35 of the Code of Criminal Procedure is not restricted to cases where the several punishments are all of the same kind, that is, are all sentences of imprisonment or all sentences of transportation, but covers cases where both kinds of punishment are inflicted KHOHUA MORAN *v* KING EMPEROR (1916) . . . . . **21 C. W. N. 608**

———— **ss. 35, 235**—

See PENAL CODE ACT (XLV OF 1860), ss 71, 147, 323
I. L. R. 39 All. 623

———— **s. 49**—

See HABEAS CORPUS
I. L. R. 44 Calc. 459

———— **s. 54**—*Penal Code (Act XLV of 1860), ss 225, 332—Cognizable offence—Issue of warrant of arrest—Arrest by a police officer without warrant—Legality of arrest—Obstruction of such officer by third parties, if an offence* A police officer is justified in making an arrest under s 54 of the Criminal Procedure Code of a person against whom a charge of having committed a cognizable offence has been preferred although the warrant issued for the purpose had not been entrusted to him, and a person obstructing and beating such officer while he is attempting to arrest the offender is guilty of offences under ss 225, 332 of the Indian Penal Code *In the matter of Charu Ch Majumdar, 20 C W N 1233*, distinguished RATNA MUDALI *v* KING EMPEROR (1917)
I. L. R. 40 Mad. 1028

———— **ss. 54, 190, 491, 498**—

See HABEAS CORPUS
I. L. R. 44 Calc. 76

———— **s. 110**—*Security for good behaviour—Jurisdiction—"Residence" of person proceeded against not material* In order to give jurisdiction to a Magistrate to proceed under s 110 of the Code of Criminal Procedure it is not necessary that the person proceeded against should be 'residing" within the local limits of his jurisdiction The meaning of the expression 'any person within the local limits' in s 110 is 'any person who is within the local limits at the time the Magistrate takes action under the section' *In re K Rangan, I L R 36 Mad 96*, followed *Attabox v Queen-Empress, I L R 27 Calc 993*, dissented from EMPEROR *v* MUNNA (1916)
I. L. R. 39 All. 139

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd*

———— **s. 122**—

See SURETY . **I. L. R. 44 Calc. 737**

———— **s. 125**—*Security to keep the peace—Application to cancel order for security—Appeal—*

cedure cannot be regarded in the same light as an appeal and the Magistrate's order thereon would not be vitiated by the fact alone that the applicant had not been heard *Semble* that on an application for revision of an order for security to keep the peace the High Court should not refuse to interfere *solely* on the ground that the applicant has not first applied to the District Magistrate under s 125 EMPEROR *v* SITA RAM (1917)
I. L. R. 39 All. 466

———— **ss. 133, 136, 137**—

See PUBLIC PATHWAY
I. L. R 44 Calc. 61

———— **ss. 133, 137**—*Order without any evidence—Determination of bona fides of claim absolutely*

without a determination of the *bona fides* of the claim set up is illegal RAM MONDAL *v* CHANDRA MONDAL (1916) . . . **21 C. W. N. 926**

———— **s. 145**—

1. ———— *Order without recording oral evidence on either side* Where a Magistrate made an order under s 145, Criminal Procedure Code, without giving either party an opportunity of adducing oral evidence as to possession *Held*, that the order was liable to be set aside SAKHAYUR ALI *v* ALHADI HAZI (1917)
21 C. W. N. 928

2. ———— *Proceedings, if can be had after order under s 107, Criminal Procedure Code—Jurisdiction* There would be no want of jurisdiction on the part of a Magistrate to continue proceedings under s 145, Criminal Procedure Code, after having made an order under s 107, Criminal Procedure Code. NASIRUDDIN SARKAR *v* GOFURUDDIN MAHAMED (1916)
21 C. W. N. 160

3. ———— *Government of India Act, 1915, s 107—Order under s 145 by a Magistrate duly empowered to act under Chapter XII—Revision—Jurisdiction of High Court* Where proceedings are in intention, in form, and in fact proceedings under Chapter XII of the Code of Criminal Procedure, and are taken by a Magistrate duly empowered to act under that chapter, the High Court has no power to send for the record of those proceedings either under the Code of Criminal Procedure or under the Government of India Act, 1915 There is no practical difference between s 107 of the Government of India Act, 1915 and s 15 of the Charter Act *Jhingai Singh v Ram Partab, I L R 31 All 150, Maharaj Tewari v Har Charan Rai, I L R 26 All 144,*

274, and *Muhammad Suleman Khan v. Fatima, I. L R. 9 All 101*, referred to. *Nathu Ram v.*

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 145—*concld.*

Emperor through Puran Mal, *15 All. L. J. 270*, and *in re Mathu Mal, I. L. R. 24 All. 315*, distinguished. *Parmeshwar Singh v. Kailaspati, 1 Patna L. J. 336*, dissented from. MATUKDHARI SINGH *v.* JAISRI (1917) . . . . **I. L. R. 39 All. 612**

——— s. 146—*Section when to be applied—Order made in disregard of decision under s. 41 of Survey Act (V of 1875) B. S. and entry in record-of-rights—Rejection of material evidence on erroneous grounds—Order made without jurisdiction or after gross and material irregularities prejudicing party.* Where in a proceeding under s. 145, Criminal Procedure Code, the trying Magistrate, without giving effect to an order made under s. 41 of the Survey Act and the entry in the record-of-rights in accordance with the order regarding the disputed land which remained fallow up to the time when the present dispute arose, attached it under s. 146, Criminal Procedure Code: *Held*, that an order under s. 146, Criminal Procedure Code, can be made only when the Magistrate is unable to satisfy himself as to which of the contending parties is in possession and the trying Magistrate when he proceeded to determine the question of possession which arose between the parties should in the first instance have presumed that the possession of this fallow land was with the owners who had title as determined by the decision under s. 41 of the Survey Act which had the force of an order of the Civil Court and which title was further to be presumed from the entry in the record-of-rights. That the Magistrate not having done that, and discarded and rejected on erroneous grounds practically every piece of evidence that might have led him to a correct conclusion, made his final order either without jurisdiction or after such gross and material irregularities as seriously to prejudice the second party. PRAFULLA NATH TAGORE *v.* J. HUDDING (1917) . . **21 C. W. N. 1059**

——— s. 147—*Dispute about right to collect tolas from hât, if comes within the section.* A dispute relating to a right to collect *tolas* from a *hât* is a dispute concerning the right of use of land within the meaning of s. 147, Criminal Procedure Code. The words "concerning the right of use of any land or water" in s. 147, Criminal Procedure Code, which have been substituted in the present Code in place of the words "the right to do anything" in or upon tangible immovable property" in the corresponding section of the Code of 1882 are of wider and more general application than the words "concerning land or water" in s. 145, Criminal Procedure Code. SARAT CHANDRA MADAK *v* MABARAK MULLICK (1916).

21 C. W. N. 439

——— ss. 172, 374—

See PRIVY COUNCIL, PRACTICE OF.

I. L. R. 44 Calc. 876

——— ss. 179, 181 (2)—

See JURISDICTION.

I. L. R. 44 Calc. 912

——— s. 185—

1. ——— *Doubt as to Court having jurisdiction to try a case, decision of High Court in case of.* In a case under s. 408, Indian Penal Code, instituted in the Court of one of the Presidency Magistrates of Calcutta, it being doubtful whether the Courts in Calcutta or in the District of 24-Parganas had jurisdiction, the High Court in exercise of its jurisdiction under s. 185 of the Code of Criminal Procedure decided that the case should be inquired into and tried by the Court within the District of 24-Parganas. BENODE BEHARY MAL *v.* GANESH CHANDRA MISTRI (1916).

21 C. W. N. 434

2. ——— *Transfer of case—Case pending in a Court outside the jurisdiction of High Court—Power of High Court to transfer to a Court within its jurisdiction or to decide by which Court such case shall be tried.* S. 185 of the Criminal Procedure Code (Act V of 1898) does not empower a High Court to transfer to a Court subordinate to its own jurisdiction a case pending in a Court subordinate to the jurisdiction of another High Court, nor does it empower a High Court to decide by which Court such a case shall be tried. RAHMAN SAHIB *v.* VELLABJI (1916).

I. L. R. 40 Mad. 835

——— ss. 185, 527—

See JURISDICTION OF HIGH COURT.

I. L. R. 44 Calc. 595

——— s. 188—*Offence committed on high seas—Native Indian subject of His Majesty—Jurisdiction of British Magistrate to try accused without sanction of Government.* The accused pulled up certain fishing stakes which the complainant had planted in the sea at a distance of five or six miles beyond the low-water mark. They awere convicted by a Magistrate for offences punishable under ss. 426, 143 of the Indian Penal Code (Act XLV of 1860). On appeal, it was contended that the Magistrate had no jurisdiction to try the case without the sanction of the Local Government under s. 188 of the Criminal Procedure Code (Act V of 1898) for the offences, if any, were committed on the high seas. *Held*, overruling the contention, that the Magistrate had jurisdiction to try the case, inasmuch as the first proviso to s. 188 of the Criminal Procedure Code, 1898, was limited to territorial jurisdiction and had no bearing upon the question of jurisdiction to try an offence committed on the high seas. EMPEROR *v.* MANUEL PHILIP (1917) . . . . **I. L. R. 41 Bom. 667**

——— s. 195—

See SANCTION FOR PROSECUTION.

I. L. R. 44 Calc. 970

1. ——— *Sanction to prosecute—Appeal—Letters Patent, s. 10.* *Held*, that an order made by a single Judge of the High Court granting sanction for a prosecution under s. 195 of the Code of Criminal Procedure is not a "judgment" within the purview of s. 10 of the Letters Patent and is not appealable under that section. Neither can such an order be called in question under sub-s. (*6*) of s. 195 of the Code of Criminal Procedure, inasmuch as a Judge of the High Court sitting singly is not subordinate to a Division Bench of the Court. *Hurrish Chunder Chowdhry v. Kalisunderi Debi, I. L. R. 9 Calc. 482*, referred to. RAMJAS *v.* MAHADEO PRASAD (1916).

I. L. R. 39 All. 147

2. ——— *Sanction to prosecute—Sanction granted by a Court of Small Causes—Application to revoke sanction—Jurisdiction—*

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 195**—*contd.*

District Judge When an order granting or refusing sanction to prosecute is made by a Court of Small Causes under s 195 of the Code of Criminal Procedure, the Court to which an application for the reversal of such order lies is the Court of the District Judge *Sundar Lal* v. *King Emperor, 6 All L. J., 796, Wazir Muhammad* v. *Hub Lal, I L R 31 All. 313, In re Ram Prasad Malla, I L R 37 Calc. 13,* and *Budhu Lal* v. *Chhatu Gope, I L R 43 Calc. 597,* referred to. *Ajudhia Prasad* v. *Ram Lal, I. L. R. 34 All. 197,* distinguished, *Ambika Tewari* v. *King Emperor, 1 Patna L J. 206,* and *Sukhdeo Singh* v. *The District Magistrate of Muzaffarpur, 2 Patna L. J. 1,* dissented from CHIDDA LAL v. BHAJAN LAL (1917).

I. L. R. 39 All. 657

3. ——— On the hearing of an application to the High Court against the order of the Presidency Small Cause Court refusing sanction to prosecute, a vakil has right of audience before Bench appointed by the Chief Justice to dispose of it. BUDHU LAL v. CHATTU GOPE (1917)

21 C. W. N. 654

4. ——— *Prosecution of witness pending disposal of suit in which he deposed, propriety of sanctioning—Cl. (7)—Revocation of sanction granted by Subordinate Judge if to be applied for before District Judge or High Court* In a suit brought by a lady relating to a certain business which she claimed as the exclusive property of her husband, the petitioner, who was her brother and Ammukhtear entrusted with the conduct of the

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sanction for the prosecution of the petitioner in respect of the statement in the affidavit. The petitioner moved the High Court. *Held,* that generally speaking it is not desirable that witnesses should be prosecuted while the case in which they have deposed or are about to depose, is still

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RAJ KUMAR DEOTY v. SATISH CHANDRA GHOSH (1917) . . . . **21 C. W. N. 753**

——— **s. 195 (1) (b)**—

See SANCTION FOR PROSECUTION.

I. L. R. 44 Calc. 650

——— **s. 195 (1) (c)**—

See SANCTION FOR PROSECUTION.

I. L. R. 44 Calc. 1002

——— **s. 195 (6)**—

See APPEAL, RIGHT OF.

I. L. R. 44 Calc. 804

——— **s. 195, sub-s. (6)**—*Sanction to prosecute for the offence of giving false evidence—Prosecution stayed at the instance of the party to be proceeded against, pending the disposal of the appeal by the Appellate Court—Expiry of six months' time*—

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 195**—*concld.*

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from its date. *Karuppana Servagaran* v. *Sinna Gounden, I. L. R. 26 Mad. 480,* followed. *Kali Kinkar Sett* v. *Dinobandhu Nandy, I. L. R 32 Calc. 379,* dissented from. KRISHNA KEBRING & Co. v. MILLER (1916) . **I. L. R. 41 Bom. 631**

——— **ss. 195 (6), (7) (c), 435, 439**—

See SANCTION FOR PROSECUTION.

I. L. R. 44 Calc. 816

——— **s. 195 cl. (7) (c)**—*Provincial Small*

[illegible]

ordinate for the purposes of that section to the Court of the District Judge. NIBARAN CHANDRA CHAKRAVARTI v. AKSHOY KUMAR BANERJI (1917)

21 C. W. N. 948

——— **s. 202**—*Magistrate's duty to record reasons before directing local investigation—Accused, if should be allowed to be represented when Magis-*

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complainant, distrusts the statement of the complainant, he must record his reasons before directing a local investigation. It is irregular and quite inconsistent with the scheme of the Code of Criminal Procedure to allow the accused to be repres

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——— **ss. 233, 535**—*Charges, misjoinder of.* The four petitioners were convicted under s. 193, Indian Penal Code, for fabricating two *kabuliyats* executed on the same day, one by two of them and the other by the two others, the two sets of executants not having any community of interest *Held,* that there was a misjoinder of charges SOFIUDDIN KAJI v. FAJEL SHAIK (1917)

21 C. W. N. 756

——— **s. 234**—*Joint trial—Same transaction.* The petitioner was jointly tried and convicted under s 411, Indian Penal Code, along with another person who was either the thief or who as first receiver having obtained a certain amount of the booty subsequently handed over a portion of it to the petitioner *Held,* that the first receipt or retention by the co accused and the act by which he handed over a portion of the stolen property to the petitioner did not form part of the same transaction. The High Court set aside the conviction and directed a retrial by a Magistrate other than the trying Magistrate RAMRATAN SUKUL v. EMPEROR (1917) . **21 C. W. N. 1111**

——— **s. 238**—

See LURKING HOUSE TRESPASS.

R. 258

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **ss. 247, 403 and 494**—*Order of acquittal under s. 494, whether final bar to further proceedings—Autrefo's acquit.* In a summons case, the Public Prosecutor withdrew from the prosecution before the accused had been served and the accused was acquitted under s. 494, Criminal Procedure Code. On a difference of opinion between ABDUR RAHIM and NAPIER, *JJ.*, as to whether the accused could be said to have been tried as well as acquitted within the meaning of s. 403, so as to bar further proceedings. *Held* by Sir JOHN WALLIS, *C.J.*, under s. 429, that the rule of English law requiring the accused to have been tried as well as acquitted in order to bar further proceedings which is embodied in s. 494 of the present Code (s. 61 of the Code of 1872), is inapplicable to the statutory acquittals subsequently introduced into the Code, *i.e.*, the sections now numbered 494, 247 and 345 which are intended to bar further proceedings whether the accused can be said to have been tried or not. Cases governed by s. 429, Criminal Procedure Code, cannot be referred to a Full Bench. *Re Kotayya, I. L. R. 40 Mad. 977* (footnote), dissented from. *Re* DUDEKULA LAL SAHIB (1917) . **I. L. R. 40 Mad. 976**

——— **s. 276**—*Civil Procedure Code (1908), s. 70—Prosecution ordered by a Revenue Officer in charge of a sale of immovable property in respect of statements made to him in that capacity—Revision—Jurisdiction.* *Held*, that a gazetted subordinate to whom the Collector had delegated his powers and who had before him proceedings for sale of immovable ancestral property was a Revenue Court acting in pursuance of the powers conferred by s. 70 of the Civil Procedure Code and that the High Court had no jurisdiction to revise an order passed by such officer in the course of those proceedings under s. 476 of the Code of Criminal Procedure. *Emperor* v. *Bhajan Tewari, I. L. R. 37 All. 334*, distinguished. *In the matter of the petition of Bhup Kunwar, I. L. R. 26 All. 249*, and *Emperor* v. *Muhammad Khan, All. W. N.*, 1902, page 202, referred to. EMPEROR *v.* ASHARFI LAL (1916).

I. L. R. 39 All. 91

——— **s. 307**—*Reference to High Court on disagreement between Judge and Jury—Acceptance by Judge of verdict on some charges reference to High Court on others—High Court if can consider evidence on charges in relation to which verdict accepted by trial Judge—Course to be followed by High Court on such reference in testing verdict referred.* Where the accused was tried on several charges and the Sessions Judge accepted the verdict of the jury as to some and disagreed as to others and referred the verdict to the High Court as to the latter. *Held*, that by this limited form of reference the High Court was precluded from considering the entire evidence on the record and on such reference all that the High Court had to decide was whether the verdict of the jury on the charges as to which there was disagreement between the Judge and the jury was a reasonable verdict which a body of reasonable men could arrive at having regard to the evidence bearing on these charges. That the Sessions Judge if he considered that the interests of justice required a reference to the High Court should have referred the whole case leaving it to the High Court to consider the whole of the evidence that was placed before the jury. KING-EMPEROR *v.* ANNADA CHARAN ROY (1916).

21 C. W. N. 435

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 339**—*Withdrawal of pardon—Procedure.* Where an accomplice who has accepted a tender of pardon made under s. 337 of the Code of Criminal Procedure fails to make a full and true disclosure of the whole of the circumstances within his knowledge relating to the offence under inquiry, there is no necessity to record any formal order withdrawing the pardon. If the accomplice has forfeited his pardon and is put on his trial for the offence in respect of which the pardon was tendered, it is open to him to plead his pardon in bar of trial, and it will then be for the prosecution to show in what manner the pardon has been forfeited. *Kullan* v. *Emperor, I. L. R. 32 Mad. 173*, followed. EMPEROR *v.* KHIALI (1917).

I. L. R. 39 All. 305

——— **s. 344**—*Case taken upon police charge-sheet—Informant represented by vakil—Absence of vakil Application by informant for adjournment—Adjournment conditional on payment of costs by informant—Validity of order.* Where a case was taken up by a Magistrate on a police charge-sheet filed on information furnished by a person who retained a vakil to represent him at the trial and joined in an application for adjournment made by the police officer on the ground of the vakil's absence: *Held*, that it was competent to the Magistrate under s. 344 of the Code of Criminal Procedure to grant an adjournment conditional on the payments of costs by such person, although he was not a complainant under s. 200 of the Code. *Mathura Prasad* v. *Basant Lal, I. L. R. 28 All. 207*, *Sew Prasad Poddar* v. *The Corporation of Calcutta, 9 C. W. N. 18*, and *Muthusami Iyer* v. *Ramanathan Chettiar*, Criminal Revision Cases Nos. 485 and 486 of 1916, followed. SUNNASI KUDUMBAN *v.* SIVASUBRAMANIA KONE (1917) . . . . **I. L. R. 40 Mad. 1130**

——— **s. 350**—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 367.

I. L. R. 40 Mad. 108

——— **s. 364**—*Statement made by accused person—Refusal of accused to sign record—Indian Penal Code s. 180.* When the statement of an accused person has been recorded under the provisions of s. 364 of the Code of Criminal Procedure and admitted by the accused to be correct, the accused is bound to sign the record of such statement, and his refusal to sign it amounts to an offence within the meaning of s. 180 of the Indian Penal Code. *Imperatrix* v. *Sirsapa, I. L. R. 4 Bom. 15*, distinguished. EMPEROR *v.* UMAR KHAN (1917) . . . . **I. L. R. 39 All. 399**

——— **s. 367**—*Transfer of a Magistrate who has written but not delivered judgment—Demand for a new trial before successor under s. 350 of Criminal Procedure Code—Legality of order granting new trial—Successor not bound to pronounce his predecessor's judgment.* A Magistrate who had tried a case wrote a judgement, dated and signed it on the day fixed for judgment. Owing to the absence of one of the accused he did not pronounce it on that day, but adjourned the case to a later date. In the meanwhile the Magistrate was transferred to another station and succeeded by another Magistrate, before whom all the accused demanded on the adjourned date a *de novo* trial. On a reference under s. 438, Criminal Procedure Code, *Held*,

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd*

——— s. 367—*concld*

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21 Calc. 955, referred to EMPEROR *v* IKRAM UD-DIN (1917) . . . **I. L. R. 39 All. 348**

——— ss. 367, 424—*Judgment in appeal* Where the reason for upholding a conviction in a judgment in appeal was that the evidence for the prosecution was slightly stronger and the story as regards probability was far more likely: *Held*, that this was not sufficient for a conviction in a criminal case KABBAT ALI *v* KING EMPEROR (1916) . . . . . **21 C. W. N. 550**

——— ss. 369, 488—*Final order in proceedings for maintenance of wife or child, if can be reviewed by Magistrate* Proceedings under s 488, Criminal Procedure Code, are judicial proceedings
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NANDA ... **21 C. W. N. 6??**

——— s. 386—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 60 . **I. L. R. 40 Mad. 767**

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd*

——— s. 408—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s 413
I. L. R. 40 Mad. 591

——— s. 413—

1. ——— *Appeal—One of* ... non appealable, *the other* ... *Registration Act*

... the fact that a co accused tried jointly with him has received a sentence which is appealable. *Emperor* v *Lal Singh, I L R 38 All 395*, and
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Venkatakris
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Registration
initiation o
"permission, ... " which word has not the same as a "sanction," which word has received a technical meaning owing to its use in Chap XV of the Code of Criminal Procedure *Held*, further, that where a conviction and sentence are set aside merely for want of jurisdiction this does not bar a fresh trial on the same facts EMPEROR *v* HUSAIN KHAN (1916) **I. L. R. 39 All. 293**

2. ——— *Joint trial of several*

... *cedure Code* S. 413 of Criminal Procedure Code prohibit an appeal by a person against whom a non appealable sentence has been passed even though appealable sentences have been passed against others jointly tried with him. Though for convenience a joint trial of several accused persons under certain circumstances is allowed, on conviction each accused must be deemed to have been convicted in a separate case of his own for the purposes of s 413 of Criminal Procedure Code. The analogy of s. 1408, Criminal Procedure Code, cannot be extended to s 413 of Criminal Procedure Code PIGGOT, J's view in *Emperor* v *Lal Singh, I. L R. 38 All 395*, not followed. *Palani Koravan* v *Emperor, 17 Mad L J, 248*, distinguished *Reg* v *Mulua Nana, 5 Bom H. C. R 24 (Cr C)*, and *Reg* v. *Kalubhai Meghabhai, 7 Bom. H C. R 35 (Cr C)*, referred to It does not follow as a matter of course that because some of the accused tried along with others are acquitted on the merits on appeal by them, others should necessarily have the benefit of the finding of the Appellate Court. Citation of the rulings of the Chief Court of Burma, disallowed. VENKATAKRISHNAYYA, *Re* (1916) . **I. L. R. 40 Mad. 591**

——— ss. 417, 435, 438—

See ACQUITTAL . **I. L. R. 44 Calc. 703**

... questioning the propriety of judgment by ...

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— ss. 435, 438—*concld.*

Judge. *Queen-Empress* v. *Karamdi, I. L. R. 23 Calc. 250,* followed. EMPEROR *v.* LOBO (1916).
I. L. R. 41 Bom. 47

——— s. 439—

1. ——— *Appealable and non-appealable sentences given on a joint trial—Appeal by some of the accused—Reference made by Appellate Court as to the others.* Of several persons tried jointly by a Magistrate, some received appealable sentences others non-appealable. The former appealed to the Sessions Judge, who acquitted them, but on grounds that were applicable to all. *Held,* that it was the duty of the Judge to bring the cases of the remaining accused to the notice of the High Court under s. 439 of the Code of Criminal Procedure. EMPEROR *v.* BHOLA (1917) **I. L. R. 39 All. 549**

2. ——— *High Court—Revisional jurisdiction—Order of acquittal.* The High Court of Bombay has power, under s. 439 of the Criminal Procedure Code, 1898, to interfere in revision with an order of acquittal; but by a long established practice of the Court, revisional applications against orders of acquittal are not entertained from private petitioners except it be on some very broad ground of the exceptional requirements of public justice. FAREDOON CAWASJI, *In re* (1917).
I. L. R. 41 Bom. 560

——— s. 476—

1. ——— *"Brought under the notice of the Court in the course of a judicial proceeding"—Circumstance fulfilling this requirement of the section.* In a case under s. 147, Indian Penal Code, a certain document was exhibited and used in evidence on behalf of the petitioner who was the accused. The trying Magistrate after having (heard the evidence proceeded on leave and while on leave wrote a judgment which he forwarded to the District Magistrate who treated it as nullity and transferred the case to his own file under s. 350, Criminal Procedure Code. Before him the Public Prosecutor applied under s. 494, Criminal Procedure Code, to withdraw from the prosecution. After examining the evidence the District Magistrate allowed this application. Subsequently, after making a preliminary enquiry, he made an order directing the prosecution of the petitioner under ss. 467, 471, 474, Indian Penal Code, in respect of the aforesaid document. *Held,* that the offences as to which the prosecution of the petitioner was directed were brought to the notice of the District Magistrate in the course of a judicial proceeding within the meaning of s. 476, Criminal Procedure Code, and the order made was not without jurisdiction. CHANDRA KISHORE ROY *v* KING-EMPEROR (1916).
21 C. W. N. 755

2. ——— *Magistrate taking cognizance of case on order under section, if can proceed against persons not named in the order.* The District Judge made an order under s. 476 against one R who had applied before him for the probate of a will which in his opinion was *prima facie* a forgery and in respect of which R was guilty of forgery or using or attempting to use a document knowing it to be forged Before the Magistrate on the application of the public prosecutor the petitioner who was not a party to the probate proceedings before the District Judge was also

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 476—*contd.*

summoned under ss 120B and 467, Indian Penal Code, in the same proceeding which was pending against R. *Held,* that the petitioner was not a party to the proceedings in the Civil Court and as the offence which appeared to have been committed was one of those described in cl. (*1*) (*c*) of s. 195, Criminal Procedure Code, neither sanction under that section nor a complaint of the Court under s. 476 was a necessary precedent to proceedings against him. That the Criminal Procedure Code provides for the taking cognizance of offences and not of offenders and a Magistrate who has legally taken cognizance of an offence on an order under s. 476 has jurisdiction to proceed against any one who may be proved by the evidence to be concerned in that offence, whether he was mentioned in the order under s. 476 or not. GIRIDHARI LAL SEROWGEE *v.* KING-EMPEROR (1916).
21 C. W. N. 950

3. ——— *Offence not mentioned in s. 195—Preliminary enquiry, necessity of—Indian Penal Code (Act XLV of 1860), s. 225B.* Where it was reported to a Munsi that the accused persons had endeavoured to rescue the judgment-debtor in a certain case tried by the Munsi from the custody of the executing peon and the Munsi purporting to act under s. 476, Criminal Procedure Code, made an order sending up the accused to the Magistrate for trial under s. 225B, Indian Penal Code: *Held,* that the order made was bad for two reasons, *viz.*, that the offence under s. 225B is not one of the offences mentioned in s. 195, Criminal Procedure Code, and that the order was made without making any preliminary enquiry. That there may be cases where no preliminary enquiry is necessary, for example, in a case where the Judge is trying the case and all the facts which are material to the charge have been brought to the notice of the Judge or have come out during the course of the hearing of the case and the Judge is already in possession of all the material facts on which it is necessary for him to form the judgment. But in a case like the present when the incident took place outside the Court and as to which the Judge himself could have no knowledge and as to which evidence must be called for, unless the Court holds such a preliminary enquiry as may be necessary to enable him to determine whether or not there is any case fit to be sent to the Magistrate, it has no jurisdiction to send the accused under s. 476, Criminal Procedure Code. TARAK DAS MOITRA *v.* KING-EMPEROR (1916).
21 C. W. N. 125

4. ——— *Practice—Order for prosecution for perjury—Court not bound to set out assignments of perjury alleged—Civil Procedure Code, 1908, 115—Revision—Material irregularity.* In every case, whether under s. 195 or s. 476 of the Code of Criminal Procedure, the particular statement, when the offence refers to a statement, should be set out, so that the accused person should not be taken by surprise, but should clearly know what is the statement which he is required to meet. It does not, however, follow that non-specification of the statement is a material irregularity justifying interference in revision by the High Court. EMPEROR *v.* CHHOTEY LAL (1917).
I. L. R. 39 All. 367

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*concld*

——— s. 476—*concld*

5. ——— *Scope of—Offence not committed by a party to the proceeding* S 476 of the Code of Criminal Procedure (Act V of 1898) does not apply to cases where the offence was not committed by a party to a proceeding in respect of a document produced or given in evidence in such proceeding *Abdul Khadar* v *Meera Saheb, I L R 15 Mad 224*, followed RAMALINGAM, *Re* **I. L. R. 40 Mad. 100**

previously Where in a case under s 488, Criminal Procedure Code, instituted before the Chief Presidency Magistrate, it appeared that the husband ordinarily resided outside Calcutta but was temporarily there on the date the application was filed and for some days previously *Held*, that this temporary residence was sufficient to give the Calcutta Court jurisdiction under sub s (9) of s 488, Criminal Procedure Code JOLLY *v* JOLLY (1917) . . **21 C. W. N 872**

——— s 491—

See JURY, TRIAL BY **I. L. R. 44 Calc. 723**

——— s 528—*Transfer of case—Power of* ... *Subdivisional Magistrate*

s 528 of the Criminal Procedure Code, on the ... the fact that the

399, followed *Raghunatha* ... *Emperor, I L R 26 Mad 140*, dissented from SANTHAPPA SETHURAN *v* GOVINDASWAMY KANDIYAR (1916) . **I. L. R. 40 Mad. 791**

——— s. 537—

See COUNTERFEIT COIN **I. L. R. 44 Calc 477**

——— s. 565—*Notification as to residence or change of residence—Temporary absence for a night not notified—Whether an offence under Indian Penal Code (Act XLV of 1860), s 176* Where all that was proved was that the accused who had been ...

I. L. R. 40 Mad. ...

CRIMINAL TRESPASS.

See PENAL CODE (ACT XLV OF 1860) s 441 **I. L. R. 39 All. 722**

See THEFT . . **I. L. R. 44 Calc. 66**

CRIMINAL TRIBES ACT (III OF 1911).

CRIMINAL TRIBES ACT (III OF 1911)—*contd.*

——— s. 23—*concld*

accused person who belongs to a tribe notified to come under the Criminal Tribes Act (III of 1911) and who ... for the first time after the enactment

he may have been convicted once or serveral times of such offence before the passing of the Act SELLAMANI, *Re* (1916) **I. L. R. 40 Mad. 923**

CROWN.

——— applicability of Transfer of Property Act (IV of 1882) to—

See LEASE **I. L. R. 40 Mad. 910**

CROWN DEBT.

——— priority of—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s 69 **I. L. R. 40 Mad. 767**

CROWN-GRANTS.

——— rule of construction of—

See INAM **I. L. R. 40 Mad. 268**

CRUELTY TO ANIMALS

See PREVENTION OF CRUELTY TO ANIMALS ACT (XI OF 1890), s 3, CL (6) **I. L. R. 41 Bom. 654**

CULPABLE HOMICIDE NOT AMOUNTING TO MURDER.

See PENAL CODE (ACT XLV OF 1860) s 300, CL (3) **I. L. R. 41 Bom. 27**

CUSTODY.

See COUNTERFEIT COIN **I. L. R. 44 Calc. 477**

See JUTE **I. L. R. 44 Calc. 98**

CUSTOM.

See CUSTOM OF THE TRADE

See PRE EMPTION **I. L. R. 39 All. 127, 480**

See SCHOOL MASTER. **I. L. R. 44 Calc. 917**

——— expert evidence in proof of—

See CUTCHI MEMONS **I. L. R. 41 Bom. 181**

terals based their claim to a ... of the deceased on a general custom of agnatic succession in the community or tribe to the exclusion of the daughter and her descendants, the appellant, the son of the daughter of the deceased who was the devisee of his will, alleged that a

CUSTOM—*contd.*

daughter married to a near collateral who takes up his residence in the father-in-law's house as a *khana-damad*, succeeded to her father's inheritance in preference to the agnatics, and produced in support of this special custom the Riwaj-i-am or official records of custom in addition to a considerable amount of oral testimony. *Held* (reversing the decision of the Chief Court), that on the death of the widow who had inherited the entire estate, the daughter and her son were entitled to succeed in preference to the respondents. Assuming that such a general custom as that relied on by the respondents existed, as to which the decisions of the Punjab Chief Court were by no means uniform, specially in the case of Mahomedan tribes who were endogamous, it was clear that the rule was admittedly subject to many exceptions: see Rattigan's "Digest of Customary Law for the Punjab," Chap. II, para. 23, where they are enumerated; and Roe's "Tribal Law in the Punjab," where particular stress is laid on the value of the Riwaj-i-am as a record of tribal customs and it is said that "a son-in-law of the house is a regular institution." *Held*, also, that the Riwaj-i-am was a public record prepared by a public officer in discharge of his duties and under Government rules, and was clearly admissible in evidence to prove the facts therein entered subject to rebuttal. And their Lordships were of opinion that the statements in the Riwaj-i-am for the Jhang District formed a strong piece of evidence in support of the custom set up by the appellant, which it lay upon the respondents to rebut, and they had failed to do so. BEG *v.* ALLAH DITTA (1916).

I. L. R. 44 Calc. 749

2. ——————— *Mahomedan law—Succession—Evidence admissible to prove custom at variance with the Mahomedan law—Exclusion of daughters from inheritance—"Riwaj-i-am"—Value of the riwaj-i-am as evidence.* One Saiyid Asghar Ali, a native of Qasba Palwal in the Gurgaon district of the Punjab, and the owner of a small amount of land in Palwal, though not a "Biswadar" nor a member of an agricultural family, entered the service of the Government of the North-Western Provinces and became a tahsildar. He rendered distinguished service during the mutiny, and was rewarded by Government with the grant of a village called Wair Badshahpur in the Bulandshahr district. After his retirement Asghar Ali retired to his native town. He died in 1876, leaving him surviving two widows, two daughters and a minor son. On the petition of the widows the Bulandshahr estate was taken over by the Court of Wards. When the son came of age, the Court of Wards released half the estate in his favour; but retained half for the benefit of the widows and the daughters and their heirs. After the death of the widows and one of the daughters, the son, Ali Asghar sued to recover possession of the remaining half of the Bulandshahr property on the ground that, according to the custom of the Punjab, and the local custom of the biswadars of Palwal in particular, daughters were not entitled to any share in the paternal inheritance in the presence of a son. *Held*, that evidence was admissible to prove the custom alleged by the plaintiff, notwithstanding that such custom was contrary to the Mahomedan law; but that the plaintiff had failed to prove that any such custom as that set up by him applied to his family. The value as evidence of the document known as "*Riwaj-i-am*" discussed. ALI ASGHAR *v.* THE COLLECTOR OF BULANDSHAHR (1917).

I. L. R. 39 All. 574

CUSTOM OF THE TRADE.

See CONTRACT ACT (IX OF 1872), ss. 1, 118.

I. L. R. 41 Bom. 518

CUTCHI MEMONS.

——————— *Custom—Onus of proof—Expert evidence in proof of custom—Opinions of practising lawyers, not relevant—Opinion and beliefs of leading members of community influenced by judicial and professional prepossessions, not relevant—Custom must be established by deliberate acts of volition—The Indian Evidence Act (I of 1872), ss. 32, cl. (3), and 48—Extent to which Cutchi Memons are governed by Hindu law—Cutchi Memons governed by the Hindu law of succession and inheritance as applying to an intestate separated Hindu possessed of self-acquired property—The Hindu law of joint family not applicable to Cutchi Memons—No distinction between ancestral property, joint family property and self-acquired property—Cutchi Memons may will away entire property—Cutchi Memons' wills to be interpreted according to Mahomedan and not Hindu law—Bequests in connection with 'Khairat,' i.e., charity work not void for vagueness—Alternative bequests in favour of charity not void as gifts conditioned in futuro—The Indian Limitation Act (IX of 1908), Art. 127—Costs.* A Cutchi Memon disposed of the whole of his property by will, part in favour of the next-of-kin and part in favour of charity. The provisions in favour of charity were as under: "I direct my executors and trustees as follows:—They shall out of my '*punji*' set apart Rs. 3,00,000 (namely, three lacs) and shall therewith purchase Government Promissory Loan Notes or Port Trust Bonds, or they shall invest the said moneys for a short time in any of the other securities written (mentioned) in the twentieth section of the Indian Trusts Act.........My executors and trustees shall spend according to law the said sum or certain portions thereof in connection with some good works or charity in such manner as they may think just and proper, such as Hospital, Sanitarium, Suvavadkhana (lying-in hospital), Musafarkhana (resting house for travellers), Madressas (schools), Scholarships, Dharamshalas, Medical Dispensaries, &c., (*i.e.*) in connection with any such 'Khairati' that is, 'charity' work, that is, in connection with such different works of charity. But the said sum shall not be expended in any other way or my heirs or the residuary legatee whom I have appointed in this my will shall not have any right to the same. I give full authority to my executors and trustees in that behalf" .... "Should no son be born to me agreeably to what is written above, or should (one) be born and should he die without leaving a son or heirs (daughters are not included amongst heirs), then as regards my whatever '*punji*' that there may be left, I give the whole thereof to my executors and trustees and direct them as follows:—They shall utilize the whole of the said '*punji*' or portions thereof in such manner as they in their discretion think proper in connection with the above mentioned or any other good works of Khairat (charity) and I give full authority to my executors and trustees in that behalf." It was contended, *inter alia*, that the testator could not validly dispose of more than one-third of his property by will and

CUTCHI MEMONS—*concld.*

that the above dispositions in favour of charity were void on two grounds (*a*) that they were bad for uncertainty, (*b*) that they were bad because they were conditional *Held*, (i) that Cutchi Memons had acquired by custom the power of disposing of the whole of their property by will; (ii) that it was not proved in this case and never ... at the Cutchi ... of their custo... nt family, as a ... g in that law ... int family and ... Cutchi Memons ... Hindu law of ... would apply to ... Hindu possessed of self acquired property and no more, (iv) that the w... d and valid ... charity ... under the Mahomedan law as offending against the ... that a gift must be made in ... *The Kojahs* ... *C 110*, con... *med, I L R* ... *omed* v *Datu* ... wed and the ... judg... *ham* v *Abra-ham, 9 Moo I A 195*, *Ahmeabhoy Hubibhoy* v. *Cassumbhoy Ahmedbhoy, I L R* 13 Bom 534, *Shivj Hasim* v *Datu Mavj Khoja*, 12 Bom H C R 281, *H rba* v *Gorbai*, 12 Bom H C R 294, and *Gangiba* v *Thavar Mulla*, 1 Bom H C R 71, referred to, *Ja naba* v *R D Sethna, I L R* 34 Bom 604, and *Chunilal Parvatshankar* v *Bai Samrath, I L R* 38 Bom 399 referred to and distinguished ADVOCATE GENERAL OF BOMBAY *v* JIMBABAI (1915) . **I. L. R. 41 Bom. 181**

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DAMAGES.

———— **against manager of a joint Hindu family—**

See CONTRACT ACT (IX OF 1872), s. 73 **I. L. R. 40 Mad. 338**

———— **suit for—**

See LEASE . **I. L. R. 40 Mad. 910**

———————— *Breach of contract of marriage—Procuring a breach of the contract—Liability for the breach—Conspiracy to break the contract* Defendant No 1 agreed to give his daughter in marriage to the plaintiff, but subsequently he broke the contract and married her to the son of defendant No. 2. The plaintiff having sued to recover damages for the breach of con... from defendants, the lower Courts decree... there... agains... nothin... and p... No. 1 ... nor w... defen... result ... DAS ...

DAUGHTER.

———— **bequest to—**

See WILL . . **I. L. R. 44 Calc. 181**

———— **succession of—**

See CUSTOM **I. L. R. 44 Calc. 749**

DE NOVO TRIAL.

See REMAND **I. L. R. 44 Calc. 929**

DEBT.

See PAYMENT TOWARDS DEBT

———— **contracted in Singapore—**

See BANKRUPTCY **I. L. R. 40 Mad. 581**

DEBTOR.

———— **right of—**

See INSOLVENCY **I. L. R. 44 Calc. 535**

DEBTOR AND CREDITOR.

See INSOLVENCY . **I. L. R. 44 Calc. 899**

DECLARATORY DECREE.

See HINDU LAW—GIFT. **I. L. R. 40 Mad. 818**

DECREE.

See COLLUSIVE DECREE

See DECLARATORY DECREE

See EX PARTE DECREE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), s 60 (c) **I. L. R. 41 Bom. 475**

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 144 . **I. L. R. 41 Bom. 625**

See PRE EMPTION **I. L. R. 44 Calc. 675**

———— **conditional, on money being paid into Court—**

See EXECUTION OF DECREE **I. L. R. 39 All. 193**

———— **payable by instalments—**

See LIMITATION ACT (IX OF 1908), SCH I, ART 182 (7) . **I. L. R. 39 All. 230**

———— **power to alter—**

See LIMITATION . **I. L. R. 44 Calc. 759**

———— **revivor of—**

See LIMITATION ACT (IX OF 1908), SCH I, ART. 183 . **I. L. R. 40 Mad. 1127**

———— **security for performance of—**

See CIVIL PROCEDURE CODE (1908), s. 145 . **I. L. R. 39 All. 225**

———— **transfer of—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), s 144 . **I. L. R. 40 Mad. 299**

1. ———————— *Appeal—Dismissal for default—Merger—Civil Procedure Code (Act V of 1908), s. 2 (2), O XXI, r 22—Omission to give notice under O. XXI, r 22, effect of—Bengal Tenancy Act (VIII of 1885), s 155 (3)—Extension of time under s 155 (3).* The original decree is merged in the appellate decree whether the latter confirms, amends, or reverses the original decree, and it is the appellate decree alone which can be executed. *Abdul Rahman* v. *Maidin*

DILUVIATED LAND.

———— suit to recover—

See LIMITATION . I. L. R. 44 Calc. 858

DIRECTOR.

See COMPANIES ACT (IV OF 1882), ss 137 AND 141 . I. L. R. 40 Mad. 706

See COMPANIES ACT (VII OF 1913), s 38 I. L. R. 41 Bom. 76

DISCHARGE.

See INSOLVENCY . I. L R. 44 Calc. 374

See SANCTION FOR PROSECUTION I. L. R. 44 Calc. 970

———— application for—

See INSOLVENCY I. L R. 44 Calc. 899

DISCRETION.

See COSTS . 21 C W. N. 339

———— of the district Judge—

See DIVORCE ACT (IV OF 1869), s 14 I L. R. 41 Bom. 36

DISCRETION OF COURT.

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), s 18 (3) I. L. R. 41 Bom 312

See SURETY I. L. R. 44 Calc. 737

DISHONEST INTENT.

See THEFT I L R. 44 Calc. 66

DISMISSAL.

See DISMISSAL FOR DEFAULT

See SCHOOL MASTER I. L. R. 44 Calc. 917

———— without notice or opportunity for defence—

See MUTT I L. R. 40 Mad. 177

DISMISSAL FOR DEFAULT.

See DECREE I. L. R. 44 Calc. 954

See SMALL CAUSE COURT SUIT I. L. R. 44 Calc. 550

DISPOSSESSION.

See DILUVIATED LAND I. L. R. 44 Calc. 858

DISQUALIFICATION.

See PLEADER . I. L. R 44 Calc. 290

DISTRICT JUDGE.

See CRIMINAL PROCEDURE CODE, s 195 I. L. R. 39 All. 657

DISTRICT MAGISTRATE.

———— reference to High Court by—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), ss 435, 438 I. L. R. 41 Bom. 47

DISTRICT MUNICIPALITIES ACT, MADRAS (IV OF 1884).

———— ss. 188, cl. (5) and 189—*Application for license to boil paddy—Refusal of license, more than thirty days after application—Boiling paddy subsequent to refusal—Charge under s 189 of the Act—Conviction, if legal* Where a petitioner

DISTRICT MUNICIPALITIES ACT MADRAS (IV OF 1884)—*concld*

———— ss. 188, cl. (5) and 189—*concld.*

applic[illegible] the c[illegible] at a [illegible] but t[illegible] days after the receipt of the application by the Chairman, and the applicant used the place for boiling paddy notwithstanding the refusal · *Held*, that the petitioner was not guilty of an offence under s 189 of the District Municipalities Act, as the place in question should be held to be duly licensed for the financial year for which the license was sought under s 188, cl (5) of the Act *Re* VENKATASUBBAYYA (1916) I. L. R. 40 Mad. 589

DIVORCE.

See DIVORCE ACT

See MAHOMEDAN LAW—DIVORCE

1. ———— *Husband and wife—Petition by husband—Adultery—Condonation—Collusion—Conduct conducing to adultery—Desertion—Divorce Act (IV of 1869) ss 12, 13, 14* Condonation is a conclusion of fact, not of law, and means the complete forgiveness and blotting out of a conjugal offence followed by cohabitation, the whole being done with full knowledge of all the circumstances of the particular offence forgiven The forgiveness which is to take away the husband s right to a divorce must not fall short of reconciliation and this must be shown by a re instatement of the wife in her former position which renders proof of conjugal cohabitation with restitution of conjugal rights necessary Collusion is held to exist where the initiation of the proceeding for dissolution of marriage is procured and its conduct (especially if abstention from defence be a term) provided for by agreement or bargain between the spouses or their agents, although it does not appear that any specific fact has been falsely dealt with or withheld The mere fact that the husband refused marital intercourse to the wife by itself is not such wilful neglect or misconduct as conduced to the adultery , nor can the fact that the parties went their own way, in the sense that they had their own friends and interests, be said to be conduct conducing to adultery, even when coupled with the abstinence by the husband from marital intercourse The fact that the husband had abstained from marital intercourse without reasonable cause and that the parties went their own way in the sense that they had their own friends and interests, would not justify a finding of desertion on the part of the petitioner. STE CROIX *v* STE CROIX (1917) I. L. R. 44 Calc. 1091

2. ———— *Suit against wife—Wife found guilty of adultery—Decree nisi on husband s petition—Appeal—Wife's costs, application for—Liability of husband—Practice and procedure* Where the wife has been herself found guilty of adultery by the Court of first instance and then actively brings the matter before the Court on appeal, the husband cannot be justly called upon by her as a matter of right to provide for her costs *Robertson* v *Robertson, 6 P. D. 119, Otway* v *Otway, 13 P. D 141* *Holt* v. *Holt, 28 L J. (P. & M) 12*, referred to *Per* MOOKERJEE, *J.* It is plain, however, that the

DIVORCE—*concld.*

doctrine in question is an encroachment upon the ordinary rule that costs follow the event, and, speaking for myself, I am of opinion that every attempt to extend its operation should be cautiously scrutinised. STE. CROIX *v.* STE. CROIX (1916) . . . **I. L. R. 44 Calc. 35**

DIVORCE ACT (IV OF 1869).

———— **ss. 12, 13, 14**—

See DIVORCE . **I. L. R. 44 Calc. 1091**

———— **s. 14**—*Husband and Wife—Dissolution of marriage—Misconduct of husband petitioner—Grave and unexplained delay in filing petition—Discretion of the District Judge—High Court's power to interfere with the discretion.* The petitioner, who was the husband, prayed for a dissolution of the marriage on the ground of his wife's adultery. The District Judge, exercising the discretion confided to him under s. 14 of the Indian Divorce Act, 1869, refused to grant a decree *nisi* in view of the following circumstances : (*i*) that there was grave and unexplained delay before any complaint was made by the husband as regards his wife's abandonment of him ; (*ii*) that both husband and wife had combined to withhold facts from the Court ; (*iii*) that husband had been guilty not of an isolated act, but of a persistent course of adultery. *Held*, that it was impossible for the High Court as a Court of Appeal to say that the District Judge's discretion was wrongly or improperly exercised adversely to the petitioner. PALMER *v.* PALMER (1916) . . . . **I. L. R. 41 Bom. 36**

DOCUMENT.

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 54 . **I. L. R. 41 Bom. 550**

———— **production of in Court**—

See SANCTION FOR PROSECUTION.
I. L. R. 44 Calc. 1002

———— **proof of**—

See EVIDENCE ACT (I OF 1872), ss. 68, 69 . . **I. L. R. 39 All. 109, 112**

———— **construction of**—

See CONSTRUCTION OF DOCUMENT.

DOMICILE.

See SUCCESSION ACT (X OF 1865), ss. 7, 9, 10 . . **I. L. R. 41 Bom. 687**

DONOR'S FAMILY.

———— **benefit to**—

See MAHOMEDAN LAW—WAKF.
L. R. 44 I. A. 21

DOWRY.

See CONSTRUCTION OF DOCUMENT.
I. L. R. 41 Bom. 5

DUNNAGE.

See CHARTER-PARTY.
I. L. R. 41 Bom. 119

DVYAMUSHYAYANA ADOPTION.

See HINDU LAW—ADOPTION.
I. L. R. 41 Bom. 315

E

EASEMENT.

———— *Water flowing down from higher to lower paddy-land carrying fish—Owner of lower land, if after 20 years' user, can prevent owner of higher land from intercepting fish when on his own land.* By catching fish in paddy-land belonging to himself peaceably and uninterruptedly for over 20 years, a plaintiff does not acquire a right of easement which entitles him to restrain the defendant, the owner of paddy-land on a higher level, from catching on his land fish which by reason of the water on plaintiff's land being fed by water flowing down from defendant's land would have come with the water into plaintiff's land. KALANDAR MANDAL *v.* AJIMODDI MANDAL (1917) . **21 C. W. N. 599**

EASEMENTS ACT (V OF 1881).

———— **s. 60**—*License—Denial by licensee of licensor's title. Held*, that a licensee in possession does not, like a tenant, by denying the title of the grantor of the licence, forfeit the licence and become liable to immediate ejectment. *Dharam Kunwar* v. *Fakira*, All Weekly Notes, 1901, p. 157, followed. MALIK AKBAR ALI KHAN *v.* SHAH MUHAMMAD (1917) . . **I. L. R. 39 All. 621**

EASTERN BENGAL AND ASSAM DISORDERLY HOUSES ACT (II OF 1907).

———— **ss. 3 and 5 (e)**—*The District Magistrate, power of, to interfere with order by a Criminal Court under s. 3 of the Act.* The District Magistrate has no power either under the E. B. and Assam Disorderly Houses Act or any other law to interfere with an order passed by a Criminal Court in the exercise of its jurisdiction under s. 3 of the Act. LOLIT MOHUN CHAKRAVARTY *v.* HARENDRO KUMAR DEY (1917).
21 C. W. N. 1135

EAST INDIA COMPANY.

———— **rights of**—

See HABEAS CORPUS.
I. L. R. 44 Calc. 459

EAST INDIAN RAILWAY.

———— *Sender's risk-note making Railway administration liable only if complete package lost, whether opposed to public policy.* The sender's risk note used in the East Indian Railway system under which the Railway Company takes liability only when there is a loss of a complete package due to wilful negligence of their staff or theft by their servants is not opposed to public policy. KALI DAS MULLICK *v.* E. I. RAILWAY CO. (1917) . . **21 C. W. N. 815**

EJECTMENT.

See FORCIBLE EJECTMENT.

See OCCUPANCY HOLDING.
I. L. R. 44 Calc. 272

———— **suit for**—

See LANDLORD AND TENANT.
I. L. R. 44 Calc. 403

ELDEST SON.

See LURME-E LAW—INHERITANCE.
I. L. R. 44 Calc. 379

ELECTION.

——— right of—

See BURMESE LAW I. L. R. 44 Calc 379

——— *Public body—Vacancy—Election to fill up vacancy by less than a majority* ... *minor as* ... according ... mosque in Madras was governed by a managing committee of five members, including the President, and three *Muthauallis* working under them, and vacancies in the committee were to be filled by election by an electoral body consisting of the remaining committee members and the three *Muthauallis* and the committee was to appoint "competent men" as *Muthauallis* for the mosque In 1906, one *M M* who was then eleven years of age was appointed by the committee as one of the *Muthauallis* In 1914 the electoral body consisted of the president three other members of the committee and two *Muthauallis* excluding *M M* Notice of a meeting to fill up a vacancy in the committee in 1914 was served on all the members of the electoral body except *M M* Three members of the electoral body attended the meeting at which the plaintiff was elected There was no rule or practice fixing the quorum ...

... of the meeting was immaterial RAZA *v* ALI (1916) . I. L R. 40 *Mad.* 941

EMERGENCY LEGISLATION.

See HABEAS CORPUS I. L R. 44 Calc. 459

EMERGENCY LEGISLATION CONTINUANCE ACT (I OF 1915).

See HABEAS CORPUS I. L. R. 44 *Calc* 459

ENDORSEMENT.

——— fraudulently obtained, suit on—

See SPECIFIC RELIEF ACT (I OF 1877), ss 39, 40, 45 I. L. R. 39 All. 103

ENDOWMENT.

See HINDU LAW—ENDOWMENT

See CONSTRUCTION OF DOCUMENT I. L. R. 39 All. 311

See HINDU LAW—ENDOWMENT I. L. R. 39 All. 553

ENEMY.

——— attempting to trade with—

See TRADING WITH THE ENEMY I. L. R. 40 Mad. 34

ENFORCEMENT OF RIGHT.

See MAHOMEDAN LAW—PRE EMPTION I. L. R. 44 Calc. 47

ENFRANCHISEMENT.

——— of Shrotriyam villages, effect of

See INAM . I. L. R. 40 Mad. 268

ENFRANCHISEMENT AND RESUMPTION.

——— of personal or service inams, distinction between—

See CHARITABLE INAMS I. L. R. 40 Mad. 939

ENHANCEMENT OF SENTENCE.

See SENTENCE, ENHANCEMENT OF

EQUITY OF REDEMPTION.

See MORTGAGOR AND MORTGAGEE I. L R. 41 *Bom* 357

ERROR.

See SALE BY GOVERNMENT I. L. R. 44 Calc. 328

ERRORS OR OMISSIONS.

——— correction of—

See REMAND I. L. R. 44 Calc. 939

ESTATE.

——— Tanjore Palace Estate, whether an—

See MADRAS ESTATES LAND ACT (I OF 1908), s 3 (2), (d) I L R. 40 Mad 389

ESTATES LAND ACT (MAD. I OF 1908).

——— ss. 3 (2) (c) and 8—*Meaning of "unsettled jagir, as distinguished from ordinary inams—Jurisdiction of Civil Courts* A personal grant for subsistence in no way differing from an ordinary *inam*, is not an *unsettled jagir* within the meaning of s 3 (2) (c) of the Estates Land Act, but an *inam* When the inamdar subsequently to the grant, acquires the *kudivaram* interest, the case comes under the exception in s 8 of the Act, and the Civil Courts have jurisdiction in ejectment SAM *v* RAMALINGA MUDALIAR (1916) I. L. R. 40 Mad. 664

——— *s. 3 (2) (d)—Tanjore Palace Estate whether an "estate"—Inam—Resumability, not a test* After the annexation of the Tanjore Raj, the British Government made an irresumable grant in inam in 1862 to the widows of the last Raja of Tanjore, of the revenue due on certain villages, commonly called the Tanjore Palace Estate, the *kudivaram* in which was vested in other persons namely, the actual cultivating tenants of the village *Held*, by the Full Bench that the Tanjore Palace Estate was an "estate" within s 3 (2) (*d*) of the Madras Estates Land Act (I of 1908) *Semble* A grant to be an inam need not be resumable *Sundaram Ayyar v Deva Sankara Bhat*, Second Appeal No 2061 of 1913, overruled SUNDARAM AYYAR *v* RAMACHANDRA AYYAR (1917) I. L. R. 40 Mad. 389

——— ss. 3 (7) (1) and 6 (1)—*Definition* ...

... 1901, that it was then leased to a stranger for cultivation for five years ending with June 1906 and that it was thereafter leased by the plaintiff to the defendants for three years ending with June 1909 The defendants contended that they had acquired occupancy rights under s 6 (*1*) of the Estates Land Act *Held*, (i) that the land was

ESTATES LAND ACT (MAD. I OF 1908)— *concld.*

———— **ss. 3 (7) (1) and 6 (1)**—*concld.*

ryoti land other than old waste within s. 6 (1) and (ii) that the defendants had acquired occupancy rights under s. 6 (1) of the Estates Land Act and were not liable to be ejected. *Held*, further, that the words "at the time of letting" in the definition of 'old waste' in s. 3 (7) (1) refer to the creation of the tenure which is in dispute. VENKATARATANM *v.* SRI RAJAH APPA RAO BAHADUR (1916) . **I. L. R. 40 Mad. 529**

———— **ss. 4, 27, 73, 143**—*Levy of fee (kanganam) for supervision of harvest, legality of—Right of landlord to enter land and make experimental harvest—Liability of tenant to pay compensation for loss of crops by theft or cattle—Liability to pay rent for fallow lands, in the absence of custom—Right of tenant to obstruct flow of rain water into the landlord's irrigation channel—Liability to pay wet rate when water insufficient—Remission of rent, legal right to.* Where the landlord is entitled to a share of the produce, the levy of a fee (called *kanganam*) by the landlord on the tenant for supervising the harvest in order to protect his interests is not illegal and it is not opposed to s. 73 or 143 of the Estates Land Act. *Devanai* v. *Raghunatha Row, (1913) Mad. W. N. 886 and Karri Peddi Reddy* v. *Receiver of Nidadavole and Medur Estates, 18 Mad. L. T., 171,* followed. A landholder entitled to a specific share of the produce, is not entitled to enter upon the land and make an experimental harvest of a small portion of the land with a view to throw on the tenant the burden of proving that the yield of the other portions was not equal to that of the experimental harvest. A landlord is not entitled to levy a fee (called *Panchamati*) as compensation for the loss caused to the crop by cattle, theft, etc., as the tenant is not an insurer and is not liable for acts beyond his control. *Raja Parthasarathi Appa Row* v. *Chevendra Chinna Sundara Ramayya, I. L. R. 27 Mad. 543,* followed. In the absence of a custom to charge rent for lands left fallow by the tenant, no rent is claimable in respect of such lands. S. 4 of the Estates Land Act should be read subject to s. 27 of the Act. *Segu Rowthen* v. *Alagappa Chetty, 26 Mad. L. J. 269, Arunachellam Chettiar* v. *Muthayanai Thevan, 26 Mad. L. J. 575* and *In re Arunachellam Chettiar, 2 Mad. L. W. 828,* followed. *Appalaswami* v. *Raja of Vizianagram, 25 Mad. L. J. 50,* distinguished. In the absence of a custom to that effect, a tenant owning dry land within the bed of an irrigation tank, has no right to obstruct the flow of rain water into the tank by putting up ridges on his land so as to retain for his cultivation the water so obstructed. If he so obstructs the flow of water, he is liable to pay the higher rate called *Sarasari* as for wet crops. A tenant is liable (*a*) to pay *Sarasari* wet rate, if he raises on his wet and dry crops when he can raise wet crops and (*b*) to pay only the usual dry rate, if he raises only dry crops owing to insufficiency of water. Remission of rent is a matter of grace and not of right. *Alagappa Chettier* v. *Tirunagavalli, 13 Mad. L. J. 377,* followed. ARUNACHALLAM CHETTIAR *v.* MANGALAM (1915).

I. L. R. 40 Mad. 640

ESTOPPEL.

See EVIDENCE ACT (I OF 1872), s. 115.
I. L. R. 41 Bom. 480

ESTOPPEL—*contd.*

See EVIDENCE ACT (I OF 1872), s. 116.
I. L. R. 40 Mad. 561

See LIMITATION ACT (IX OF 1908), s. 19.
I. L. R. 40 Mad. 701

See TITLE . **I. L. R. 44 Calc. 771**

See WAIVER . **I. L. R. 44 Calc. 10**

1. ———— *Judgment affirmed on Appeal—Second Appeal not decided on merits—"Finally decided"—British Baluchistan Regulation IX of 1896, s. 10.* The appellant, in pursuance of a deed of dissolution of partnership, executed a bond for the payment of a sum of money to the respondent. He sued to set aside the bond on the ground of fraudulent misrepresentation as to the amount due. The trial judge and, on appeal, the District Judge held that the alleged fraud was not established, and dismissed the suit. Upon a further appeal to the Judicial Commissioner it was held, without entering into the merits, that the appellant could not avoid the bond as he did not claim to avoid the deed. In a subsequent suit by the respondent upon the bond the appellant raised as a defence the same case of fraud: *Held*, that the issue raised by the defence was not *res judicata*, since the matter had not been "finally decided" within the meaning of s. 10 of the British Baluchistan Regulation IX of 1896. ASHGAR ALI KHAN *v.* GANESH DASS (1917) . . . **L. R. 44 I. A. 213**

2. ———— *Will by Hindu mother, in favour of daughter and then to son's son if any—Legate estopped from denying title of remainderman—Adverse possession, if any.* Where a Hindu mother purported to bequeath her husband's property to her daughter with a proviso that if male children should be born to her (testatrix's) son (who survived her) they should succeed to the whole estate, and the daughter entered into possession under the will and carried out all its provisions. In a suit brought by the purchaser from the son's son against the purchaser from the daughter's son: *Held*, (i) that the will was invalid because the testatrix had no interest of which she could dispose by will, and it further contained an ineffectual bequest to unborn grandsons; (ii) that the daughter (legatee) and her successor in title by her acceptance of the will were estopped from disputing the title of the son's son (remainderman); and (iii) that the principle that a person who accepts a position conferred on him or her by a will cannot at the same time repudiate so much of the will as conveys an interest to another person, governed the case. *Board* v. *Board, L. R. 9 Q. B. 48,* and *Rupchand Ghose* v. *Sarbessur Chandra Chander, 3 C. L. J. 629,* referred to. DURGA DAS KHAN *v.* ISHAN CHANDRA DEY (1916).

I. L. R. 44 Calc. 145

ESTOPPEL BY CONDUCT.

———— *Unregistered deed of exchange of two plots each worth more than Rs. 100—Conduct confirming the exchange, whether an estoppel in a suit to recover possession—Transfer of Property Act IV of 1882, ss. 51, 54 and 118—Compensation.* The plaintiff and the defendant exchanged adjacent plots of land each worth more than a hundred rupees by means of an unregistered deed on 4th March, 1908, both believing that they had effected a valid transfer.

ESTOPPEL BY CONDUCT—contd

Possession was taken by each party and defendant began to erect a very costly building placing a wall thereof on the land he had acquired in exchange While the building was in progress, the plaintiff demanded and obtained Rs 525 from the defendant on the ground that the plot he parted with was found to be more in extent than the defendant's After the completion of the building, the plaintiff brought this suit in 1911 for recovery of his plot after removal of the defendant s building on it The defendant pleaded *inter alia* that he had acquired a valid title to the plot, that the plaintiff was estopped by his conduct from recovering the plot and that if the plaintiff was to get a decree, he must pay compensation as a condition of recovery *Held*, on Letters Patent Appeal, by SADASIVA AYYAR and NAPIER, *JJ* (ABDUR RAHIM, *J*, dissenting) —(i) that the plaintiff was not estopped and that he was entitled to recover his plot owing to the absence of a registered deed of exchange as required by ss 54 and 118 of the Transfer of Property Act, and (ii) that the plaintiff must pay sufficient compensation before recovery, under s 51 of the Transfer of Property Act *Kurri Veerareddi* v *Kurri Bapireddi*, *I L R 29 Mad 336*, followed *Mahomed Musa* v *Aghore Kumar Ganguli*, *I L R 42 Calc 801*, and *Venkayyamma Rao* v *Appa Rao I L R 39 Mad 509*, explained and distinguished *Per* ABDUR RAHIM, *J*—Plaintiff was estopped by his conduct from recovering his lot in spite of the want of a registered deed of exchange *Per* SADASIVA AYYAR and NAPIER *JJ* The word 'transferee' in s 51 of the Transfer of Property Act, includes also a transferee under an invalid transfer and the words 'the person causing the eviction' include a transferor under an invalid transfer RAMANATHAN *v* RANGANATHAN (1917)

I. L. R. 40 Mad 1134

ETIQUETTE OF THE BAR.

See BARRISTER **I. L. R 44 Calc. 741**

EVIDENCE.

See EVIDENCE ACT (I OF 1872)

See CIVIL PROCEDURE CODE (1908), O XXVI, RR 9, 16, 17, 18 **I. L R. 39 All. 694**

See CUSTOM . **I. L. R. 39 All 574**

See EVIDENCE ACT (I OF 1872), ss 68 69 . **I. L. R. 39 All. 109, 112, 241**

See ORAL EVIDENCE **I. L. R. 41 Bom. 466**

See TRANSFER OF PROPERTY ACT (IV OF 1882), s 54 . **I. L. R. 41 Bom. 550**

———— **onus of proof of, necessity—**

See HINDU LAW—ENDOWMENT **I. L. R. 40 Mad. 402**

———— **sufficiency of, to prove necessity—**

See HINDU LAW—ENDOWMENT **I. L. R. 40 Mad. 402**

1. ———— *Admissibility—Conversation between defendant and plaintiff's pleader when suit in contemplation, if admissible in evidence—Admission made by one defendant evidence against all others—Evidence Act (I of 1872), ss 18,*

EVIDENCE—contd

23 In a suit for rent, there was a talk of settlement between the plaintiff s pleader and one of the defendants when the suit was about to be instituted *Held*, that the mere fact of the conversation taking place when the parties were contemplating that a suit might be instituted is not in itself sufficient to prevent the conversation from being put in evidence *Wallace* v *Small*, *(1830) Moo & M 446*, *Watts* v *Lawson*, *(1830) Moo & M 447n*, *Nicholson* v *Smith*, *3 Starkie 128*, *Harding* v *Jones*, *(1835) T & G, 135*, and *Jorden* v *Money*, *5 H L C 185*, relied on *Mohabeer Singh* v *Dhujjoo Singh*, *20 W R 172*, discussed When several persons are jointly interested in the subject matter of a suit, an admission by one of them is receivable in evidence not only against himself, but also against the other defendants, whether they be all jointly suing or sued, provided that the admission relates to the subject matter in dispute and be made by the declarant in his character of a person jointly interested with the party against whom the evidence is tendered *Kowsulliah Sundari* v. *Dasi* v *Makta Sundari Dasi*, *I L R 11 Calc 588*, *Chalho Singh* v *Jharo Singh*, *I L R 39 Calc 995*, and *Ahinsa Bibi* v *Abdul Kader Saheb*, *I L R 25 Mad 26*, referred to *Kali Kisore Chowdhury* v *Gopi Mohan Roy Choudhury*, *2 C W N 166*, distinguished MEAJAN MATBAR *v* ALIMUDDI MIA (1916) **I L R. 44 Calc. 130**

2. ———— *Admissibility—Conveyance—Intention to Mortgage—Third party owner—Notice—Evidence Act (I of 1872), s 92* As between the parties to an absolute conveyance, s 92 of the evidence Act (subject to its provisos) precludes the giving of oral evidence to prove that the transaction was intended to be a mortgage The section however, applies only as between the parties Where, therefore, the grantee takes knowing that a third person is the owner of the property and the grantor is only a mortgagee, and that the intention a fall parties is merely to transfer the mortgage, oral evidence is admissible to prove the real nature of the transaction *Semble* that a claim by the grantee [illegible]

approved *Baksu Lakshman* v *Govinda Kanji*, *I L R 4 Bom 594*, and other decisions, disapproved. MAUNG KYIN *v* MA SHWE LA (1917) **L R. 44 I. A. 236**

3. ———— *Mortgage deed, form of proof of—Evidence Act (I of 1872), ss 68 to 71.* In a suit on a mortgage bond, the admission of execution by the sole mortgagor does not dispense with the necessity of complying with the provisions of s 68 of the Evidence Act in order to prove the execution of the document as against other parties in the suit who do not admit such execution Such a document must be proved as against them in accordance with the provisions

EVIDENCE—*contd.*

4. ——————— party in possession of written evidence on material issue not justified in withholding it on the plea of onus of proof being on his opponent. T. S. MURUGESAM *v.* MANICKAVASAKA (1917) . . **21 C. W. N. 761**

5. ——————— *Relevancy of judgment—Trial of accused for criminal breach of trust of certain amounts—Judgment in a civil case between the parties as to the amounts—Admissibility of the judgment into the criminal proceedings.* The applicant was prosecuted for criminal breach of trust with reference to certain items. There was a civil suit between the complainant and the applicant regarding items which included the items involved in the criminal case. The civil suit was decided in applicant's favour. He thereupon applied to admit the judgment in evidence in the criminal case, and on the strength of it prayed for an order of discharge. The Magistrate having refused to admit it in evidence the applicant applied to the High Court. *Held,* that the judgment of the Civil Court was admissible in evidence, inasmuch as it would be relevant and important to know what the rights of the parties were, as determined by the civil Court, with respect to the items charged against the applicant. MARKUB, *In re* (1914).

I. L. R. 41 Bom. 1

6. ——————— *Unregistered deed—Admissibility of deed for collateral purposes—Joint owners—Adverse possession.* One of two brothers, joint owners of certain immovable property, executed a deed of relinquishment in favour of the other. The deed was never registered, but the brother in whose favour it was made remained in possession of the entire property. *Held,* that the deed of relinquishment was admissible in evidence to prove the nature of the occupant's possession, and that there was no legal impossibility about one co-owner claiming adverse possession as against the other. JHAMMU *v.* KUTRAMANI, (1917) . . . **I. L. R. 39 All. 696**

EVIDENCE ACT (I OF 1872).

——————— ss. 11, 14, 15—*Evidence—Admissibility of evidence of similar but unconnected transactions in which the accused were concerned—Penal Code (Act XLV of 1860), s. 420—Cheating.* S., Y and W were charged with having cheated B and P and thereby obtained from them various sums of money. The mode adopted by the accused was as follows: S, representing himself to be a broker, introduced B and P, who wanted to borrow money, to Y and W, as being the agents of a wealthy lady of the name of Akbari Begam, and a story was told them that Akbari Begam had a large amount of a ready money which she was willing to lend on very favourable terms. Negotiations were commenced, and extended over a considerable period, in the course of which B and P were induced to part with various small sums of money for preliminary expenses. Ultimately the negotiations fell through, and it was discovered that they had been fraudulent from beginning to end. The accused's defence was, broadly, that, while admitting that B and P had paid them the sums of money in questions, the payments were made in circumstances totally different from those alleged by the prosecution. They denied that they had ever said that there was such a person as Akbari

EVIDENCE ACT (I OF 1872)—*contd.*

——————— ss. 11, 14, 15—*contd.*

Begam, and, *a fortiori,* that they had ever represented themselves as her servants or agents: *Held,* that on the case for the prosecution evidence was admissible that the same three persons had on other occasions proposals made of much the same kind to other persons to whom they told a story similar in all essential particulars down to the name of the proposed lender of the money. *King-Emperor* v. *Abdul Wahid Khan, I. L. R. 34 All. 93,* and *Emperor* v. *Debendra Prasad, I. L. R. 36 Calc. 573,* referred to. EMPEROR *v.* YAKUB ALI (1916) . **I. L. R. 39 All. 273**

——————— ss. 18, 23—

See EVIDENCE . **I. L. R. 44 Calc. 130**

——————— ss. 18, 32 (3)—*Draft record-of-rights, entry in, admissibility of—Recital in conveyance executed by some defendants, if admissible against defendants other than the executants—Reception of inadmissible evidence, if vitiates judgment arrived at independently thereof—Omission to object to irrelevant evidence, effect of—Court, if will entertain objection first taken in appeal as to improper admission of document not per se inadmissible—Ss. 155 (3), 157.* The plaintiffs sued for recovery of possession of a tank on declaration of title alleging that it had been excavated by their ancestor long ago after whom it was known and it had been in their possession all along till dispossession by the defendants. The lower Appellate Court in decreeing the suit relied on (1) an entry in a draft record-of-rights (which was omitted in the record finally published) that the tank was known by the name of plaintiff's ancestor, (2) a recital in a conveyance of sale of an adjoining piece of land executed by some of the defendants (who at the time of the conveyance had acquired no interest in the land in suit) in favour of a stranger to the effect that the land was bounded by the tank known after the ancestor of the plaintiffs. The conveyance was duly proved and admitted in evidence without objection: *Held,* that the entry in the draft record-of-rights was not admissible in evidence but this did not vitiate the judgment of the lower Appellate Court which arrived at the conclusion on the merits independently of the evidence improperly admitted. That the recital in the conveyance though admissible against the makers of the conveyance was not admissible as admissions against the other defendants under s. 18 of the Indian Evidence Act nor was it admissible under s. 32 (3) of the Evidence Act, the conditions mentioned in the introductory words of the section not having been fulfilled. That principle which regulates the reception in evidence of an admission by one defendant against another is that when several persons are jointly interested in the subject-matter of the suit an admission of any one of these persons is receivable not only against himself but also against the other defendants whether they be all jointly suing or sued provided that the admission relates to the subject-matter in dispute and be made by the declarant in his character of a person jointly interested with the party against whom the evidence is tendered. The requirements of the identity in legal interest between the joint owners is of fundamental importance and the joint ownership must have existed at the time

EVIDENCE ACT (I OF 1872)—*contd*

——— **ss. 18, 32 (3)**—*concld*

the statement was made That if the plaintiff had cited the defendants who were the executants of the *kobala* as witnesses, the recital could have been received in evidence to impeach their credit under s 155 (3) or to corroborate their testimony under s 157 of the Evidence Act and was not *per se* inadmissible That an erroneous omission to object to evidence which is irrelevant and consequently inadmissible under any circumstances does not make it admissible but the Court will not entertain for the first time in appeal an objection that a document which *per se* is not inadmissible in evidence has been improperly admitted in evidence On this principle the High Court declined to set aside the judgment of the lower Appellate Court. AMBAR ALI *v* LUTFE ALI (1917) . . **21 C. W. N. 996**

——— **s. 26**—*Statement to Excise Officer after arrest effected with help of police sergeants when such sergeants present in the house searched though not in the room where statement made, if a statement made in police custody, and if admissible—Protracted trial, evils of.* Where in a case under s 9 of the Opium Act it appeared that two police sergeants accompanied the Excise Officer and assisted him in raiding a house and arresting the appellant and were in the house as part of the force in charge of the prisoners although they were not present in the room in which the appellant made certain statements to the Excise officer. *Held,* that the appellant was to be regarded as having been in police custody for the purpose of s 26 of the Evidence Act and the statements were inadmissible. Protracted trial in the Presidency Magistrate's Court animadverted on IBRAHIM MUHAMAD *v.* KING EMPEROR (1917) . . . **21 C. W. N. 694**

——— **s. 32, sub-s. (3)**—

See HINDU LAW—JOINT FAMILY PROPERTY . . **L. R. 44 I. A. 201**

——— **ss. 32, (3), 48**—

See CUTCHI MEMONS

I. L. R. 41 Bom. 181

——— **s. 32 (5)**—*Evidence of relationship—Statement made in a plaint filed by a member of the family since deceased—Second appeal—Finding of fact.* In a suit to recover possession of property which had belonged in her life-time to one Musammat Fiddo, one of the material issues was whether the plaintiffs were or were not the sons of one Munir Khan, paternal uncle of Musammat Fiddo In support of their statement that they were the sons of Munir Khan the plaintiffs tendered in evidence the plaint in a suit, filed some- [illegible]

[illegible] evidence on the subject of the plaintiffs relationship to Munir Khan, but was evidence to which considerable weight might be attached The High Court, however, in second appeal, is not concerned with the quantum of evidence upon which a finding of fact come to by a Court [illegible]

[illegible] with it. *Coghlar* v. *Cumberland,* [illegible]

EVIDENCE ACT (I OF 1872)—*contd*

——— **s. 32 (5)**—*concld*

D. 704, referred to. MAULADAD KHAN *v.* ABDUL SATTAR (1917) . . **I. L. R. 39 All. 426**

——— **s. 35**—

See HINDU LAW—REVERSIONERS

I. L. R. 40 Mad. 871

——— **s. 44**—*Right of a stranger to a decree affecting his rights to show in a subsequent suit that the decree was invalid on the ground of fraud—Maintainability of such subsequent suit without previous suit to have decree set aside* If by virtue of a previous High Court decree a person, who is no party to that decree, is deprived of his rights with respect to certain property, a suit by such a person with respect to the property [illegible] first to bring [illegible] set aside on [illegible] the Evidence [illegible] ht to be used against him as evidence ASWINI KUMAR SAMADDAR *v* BONOMALY CHAKRAVARTI (1916).

21 C. W. N. 594

——— **ss. 68, 69**—

1. ——— *Evidence mortgage-deed—Proof of mortgage deed after death of executant and marginal witnesses Held,* that the executant of and all three marginal witnesses to a mortgage-deed being dead, a mortgage deed was sufficiently proved by evidence that the signature of the mortgagor was in his handwriting and that the signatures of two of the marginal witnesses were in their hand writing By such evidence a presumption of due execution was raised which it lay on the defendants to rebut *Wright* v. *Sanderson, L. R 9 P. D. 149, referred to* UTTAM SINGH *v.* HUKAM SINGH (1916).

I. L. R. 39 All. 112

2. ——— *Evidence—Mortgage—Proof of mortgage deed* A mortgage deed on the face of it appeared to be attested by a large number of witnesses In a suit upon the bond the mortgagee called one attesting witness who proved that he saw the mortgagor sign the mortgage and that he himself signed his name as an attesting witness The other witnesses were not called, nor did the witness who was called say that any other attesting witness was present, nor was he asked the question by either side *Held,* that, in the absence of any rebutting evidence, the mortgage deed must be considered to be sufficiently proved *Uttam Singh* v. *Hukam Singh, I. L. R 39 All 112,* referred to SHIB DAYAL *v.* SHEO GHULAM (1916)

I. L. R. 39 All. 241

3. ——— *Transfer of Property Act (IV of 1882) s. 59—Proof of execution—Document proved have been executed in the presence of one attesting witness who was examined.* One of the attesting witnesses to a mortgage deed was dead . The other attesting witness was called and proved that the mortgage deed was signed by the mortgagor in his presence and that he signed the deed as an attesting witness. It was not expressly proved that there was another attesting witness present who saw the mortgagor sign, but it was not proved to be contrary that there was not another attesting witness. *Held,* that the mortgage was sufficiently proved according to the requirements of ss 68 and 69

EVIDENCE ACT (I OF 1872)—*contd.*

———— **ss. 68, 69**—*concld.*

of the Indian Evidence Act. RAM DEI *v.* MUNNA LAL (1916) . . **I. L. R. 39 All. 109**

———— **ss. 68 to 71**—

See EVIDENCE . **I. L. R. 44 Calc. 345**

———— **s. 91**—*Hindu Law—Partition—Partition evidenced by a writing not registered—Oral evidence admissible to prove the fact of partition.* The fact of partition may be proved by oral evidence although the deed embodying the terms of partition cannot be proved for want of registration. CHHOTALAL ADITRAM *v.* BAI MAHAKORE (1917) . . . . **I. L. R. 41 Bom. 466**

———— **s. 92**—

See CONTRACT ACT (IX OF 1872), ss. 1, 118 . . **I. L. R. 41 Bom. 518**

See EVIDENCE . **L. R. 44 I. A. 236**

———— *Mortgage with possession—De facto substitution of the other property for part of that included in the mortgage-deed—Suit for redemption—Evidence.* The plaintiff mortgaged to the defendants three specific items of property for a sum of Rs. 99. The mortgage was registered, and it was a possessory mortgage, but the defendants never in fact got possession of more than one of the items mentioned in the deed. They did, however, get possession as mortgagees of another piece of property not mentioned in the deed, apparently by virtue of a subsequent oral agreement with the plaintiff, and they held this piece of property in mortgagee possession for a number of years: *Held*, on suit by the plaintiff for redemption, that the plaintiff was entitled to lead evidence to prove two facts: (i) that the possession of the defendants over the plot not mentioned in the mortgage deed was that of mortgagees and had never been adverse to himself and (ii) that the right of mortgagee possession was terminated by the payment of Rs. 99 which had been duly tendered by him. BAID RAM *v.* TIKA RAM (1917).

I. L. R. 39 All. 300

———— **s. 92, pro. 6, and ss. 93 and 95 to 97**—*Deed of settlement, construction of—Subsequent conduct of parties to the instrument, whether admissible in evidence—Execution proceedings—Res judicata—Notice of particular questions, necessity for—Application for execution—Order at one stage of the application, if res judicata at another stage.* Where, by a Deed of Settlement, almost the whole of the settler's immovable property was transferred to trustees together "with buildings and appurtenances thereto" and the question was raised as to whether certain specific properties were included in the deed: *Held*, that the ambiguity in the deed, being latent, in construing the deed the subsequent conduct of the parties thereto, can be legitimately looked into under s. 92, proviso 6 of the Evidence Act for the purpose of ascertaining to what persons or things the expressions used therein were intended to apply. *Tulshi Pershad Singh v. Ramnarain Singh, I. L. R. 12 Calc. 117, Venkatanarasimha v. Venkatapathi, 28 Mad. L. J. 510, Forres v. Watt, 2 Sc. & D. App. 214,* and *Van Diemen's Land Company v. Table Cape Marine Board,* [1906] *A. C. 92,* referred to. *Vissanji Sons & Co. v. Shapurji Burjorji, I. L. R. 36 Bom. 387, 395,* explained. A decree-holder applied for execution of his decree by attachment and sale of certain properties in the possession of the respondents, the sons of the deceased judgment-debtor. Notice went to the respondents to show cause why they should not be brought on the record as the legal representatives of the deceased judgment-debtor for purposes of execution: they did not appear and an order was made *ex parte*. *Held*, that they were not estopped by this order from moving to set aside the attachment on the ground that the properties did not belong to the judgment-debtor. Observations as to the application of the principle of *res judicata* to orders in execution. SUBRAMANIA AYYAR *v.* RAJA RAJESWARA DORAI (1916).

I. L. R. 40 Mad. 1016

———— **s. 115**—*Estoppel—Minor included in "person"—Minor passing himself off as a major is bound by his contract—Sale of house.* The plaintiff purchased a house from defendant No. 2 who was not clearly a minor in appearance and who represented to the plaintiff and caused her to believe that he was a major. In a suit by the plaintiff, to recover possession of the house, defendant No. 2 pleaded his minority:—*Held*, negativing the plea, that defendant No. 2 being "a person" within the contemplation of s. 115 of the Indian Evidence Act, 1872, and having by direct declaration intentionally caused the plaintiff to believe that he was a major, was precluded absolutely from denying the truth of that assertion. *Ganesh Lala v. Bapu I. L. R. 21 Bom. 198,* followed. DADASAHEB DASRATHRAO *v.* BAI NAHANI (1917).

I. L. R. 41 Bom. 480

———— **s. 116**—*Estoppel—Landlord and tenant—Tenant not let into possession by the landlord—Whether estopped from denying the landlord's title to the property.* *Held* by the Full Bench (SESHAGIRI AYYAR and PHILLIPS, JJ., ABDUR RAHIM, Offg. *C. J.*, dissenting), that a tenant who has executed a lease but has not been let into possession by the lessor is estopped from denying his lessor's title in the absence of proof that he executed the lease in ignorance of the defect in his lessor's title or that his execution of the lease was procured by fraud, misrepresentation or coercion. *Per* ABDUR RAHIM, Offg. *C. J.*—A tenant who was let into possession is estopped from denying a landlord's title. A tenant who was not let into possession by the person seeking to eject him, is not estopped from denying the plaintiff's title: he may show that the title is in some third person or in himself. But the execution of a lease or payment of rent by the defendant is *primâ facie* proof of the plaintiff's title which the Court dealing with the evidence will ordinarily treat as conclusive in his favour unless the fact is sufficiently explained. In most cases of this nature the presumption in favour of the plaintiff can only be displaced by the defendant showing that the attornment was made by him in ignorance of the plaintiff's title or was induced by fraud, misrepresentation or coercion. VENKATA CHETTY *v.* AIYANNA GOUNDAN (1916).

I. L. R. 40 Mad. 561

EXAMINATION.

See INSOLVENCY **I. L. R. 44 Calc. 874**

EXECUTING COURT.

——— competency of, to enquire into title of transferee—

See Civil Procedure Code (Act V of 1908), O XXI, r 2 (3)
I. L. R 40 Mad. 296

EXECUTION.

See Civil Procedure Code (Act V of 1908), s 60 (c)
I. L. R. 41 Bom. 475

See Civil Procedure Code (Act V of 1908), s 144 I. L. R. 41 Bom. 625

——— application for—

See Evidence Act (I of 1872), s 92, pro 6 and ss 93 and 95 to 97
I. L. R 40 Mad 1016

——— application for, defective—

See Limitation Act (IX of 1908) Sch I, Art 182, cl (5)
I. L. R. 40 Mad. 949

——— purchaser in, rights of—

See Transfer of Property Act (IV of 1882), s 67 I. L. R. 40 Mad. 77

——— transmission of decrees to Courts of Native States—

See Execution *infra*
I. L. R. 40 Mad 1069

——— *Limitation—Application to transmit a decree of a British Court to a Travancore Court, whether an execution application or a step in aid of execution—Issue of notice on such application whether affords a fresh starting point, under Art 182, cl (6)—Limitation Act (IX of 1908), Art 182, cl 5—Power of British Courts to send their decrees for execution to Courts of Travancore State—Civil Procedure Code (Act V of 1908), s 45, effect of* Held by the Full Bench (i) that in the absence of any provision to that effect in the Civil Procedure Code, Courts in British India have no power to send their decrees for execution to the Courts in Travancore but may and should send to these Courts the documents they require to enable them to execute these decrees under the powers conferred upon them by the legislative authority in Travancore, (ii) that the execution contemplated by the Civil Procedure Code and Art 182 of the Limitation Act being execution by British Courts in India on application made to such Courts, an application to a British Court in India to send a decree [illegible]

Travancore Court does not give a fresh starting point under Art 182 (6) as no such notice is required by the Civil Procedure Code to be issued as a preliminary for execution by the Travancore Court Pierce Leslie & Co, Ltd, Cochin v Perumal (1917) I. L. R. 40 Mad. 1069

EXECUTION APPLICATIONS.

See Civil Procedure Code (Act V of 1908), ss 144 and 11, exp IV, and 47, O II, r 2
I. L. R. 40 Mad. 780

EXECUTION OF DECREE.

See Execution Sale

See Civil Procedure Code, 1908, ss 47 52 . I. L. R. 39 All. 47

See Civil Procedure Code (1908), s 60 . I. L. R 39 All 308

See Civil Procedure Code (1908), O XXI, r 66 I. L. R. 39 All. 415

See Civil Procedure Code (1908), O XXI, rr 92, 93
I. L. R 39 All. 114

See Civil Procedure Code, 1908), O XXXIV, r 14
I. L. R. 39 All 36

See Limitation Act (IX of 1908), Sch I, Arts 29, 36, 120
I. L. R. 39 All. 322

See Limitation Act (IX of 1908), Sch I, Art 182 (7)
I. L. R 39 All. 230

See Mortgage I. L. R. 39 All 67

See Res judicata I. L. R. 39 All. 379

——— application for—

See Civil Procedure Code Act (V of 1908), O XXI, r 2 (3)
I. L. R. 40 Mad. 296

1. ——— *Decree temporarily satisfied effect on limitation* An *ex parte* decree was obtained against two persons, the appellant and one *S* The decree was executed against *S* by the sale of whose moveables the whole decree was satisfied On a suit by *S* the decree as against him was set aside and the money realised from him was ordered to be refunded The decree holder then applied for execution against the appellant *Held*, that the order directing refund by the decree holder to *S* in effect reopened the execution proceedings and the application for execution against the appellant must be [illegible]

(1916) [illegible]

2. ——— *Limitation—Decree* [illegible] *into Court within* [illegible] *final"—Inter* [illegible] cree was passed [illegible] on his deposit [illegible] "within thirty days of the decree becoming final," it was *held* [illegible] ing a sum of money into court "within thirty days of the decree becoming final," it was *held* that this did not signify merely the bare period of limitation for an appeal but included also the time necessary for obtaining the requisite copies Bhagelu Salu v Ram Autar Shukul (1916)
I. L. R. 39 All. 193

EXECUTION OF DECREE—*contd*

apply to such a case but the Court has inherent power on a proper application being made to review the order and to enquire whether the objector had or had not a reasonable case for not appearing on the date appointed for the hearing of his petition. BHARAT CHANDRA NATH *v.* IASIN SARKAR (1917) . **21 C. W. N. 769**

4. ———————— *Execution of decree by instalments—Limitation—Petition of compromise—Decree—"Application in accordance with law"—Civil Procedure Code (Act V of 1903), O. XXI, r. 17—Limitation Act (IX of 1908), Art. 182, cls. (5) and (7)—Instalment decree—Default.* Where in a suit against five persons for recovery of monies due on a handnote separate compromise petitions for instalment decrees were filed on the 1st July 1911 in which there was a provision that default being made in the payment of one *kist*, the whole amount would become due, and subsequently on the 10th July 1911, one instalment decree was passed against all the five defendants in which separate amounts were decreed against each defendant to be paid as per instalments provided therein, but in which the condition as to the whole amount being due in default of the payment of one *kist* was not stated; and an application for execution of the whole decree having been made on the 10th July 1914 against all the five defendants it was dismissed on the 20th February 1915 on the ground that the prayer for execution was not in accordance with the terms of the decree; and subsequently the present application for execution of the decree for the *kists* from January 1911 to September 1915 was made on the 10th November 1915 against defendant No. 2 alone and it was dismissed by the lower Court on the ground that the decree was barred by limitation: *Held*, that in order to properly understand what the decree was, the Court was entitled to look at and consider the terms of the compromise and was not bound to take the decree by itself; that the application for execution dated the 10th July 1914 having been rejected under O. XXI, r. 17, sub-r. (*1*) as not being an application in accordance with law, did not save limitation; that the whole decree became due on the default of the payment of one *kist*, and the decree-holder had no option to recover the decretal amount in accordance with the *kists* and his present application for execution of the decree dated the 10th November 1915 was barred by limitation. JAYANUDDIN KHAN *v.* JAMIRUDDIN SARKAR (1917) . . **21 C. W. N. 835**

5. ———————— *Procedure—Practice—Rival decree-holders—Assets in the hands of Registrar—Attachment of fund with Accountant-General—Anticipatory attachment—Priority—Rateable distribution—Civil Procedure Code (Act V of 1908), s. 73; O. XXI, r. 52.* A question of rateable distribution under s. 73 of the Code of Civil Procedure of 1908 arises amongst creditors where the application for execution has been made before the receipt of assets. O. XXI, r. 52, does not allow of an anticipatory attachment of money expected to reach the hands of a public officer and is restricted only to money actually in his hands. Where a fund in Court has been attached by several creditors of the judgment debtor, none of the attaching creditors is entitled to preferential treatment by reason of the priority of his attachment; as the attachments create no charge or lieu upon the fund, so long as the fund is in the custody of the Court is bound to apply the rules of justice, equity and good conscience in the determination of the relative rights of the creditors who wish to proceed against the fund in *custodia legis* for the satisfaction of their dues. In such circumstances, the fund, if sufficient to meet in full the claims of the creditors, should be rateably distributed amongst them. THAKURDAS MOTILAL *v.* JOSEPH ISKENDER (1917).

I. L. R. 44 Calc. 1072

EXECUTION PROCEEDINGS.

———————— *Enforceability in, of ante-decree agreement as to manner of execution of the decree—Civil Procedure Code (Act V of 1908), O. XXI, r. 2, no bar by—Rule of stare decisis, applicability of, to matters of procedure. Held* by the Full Bench (PHILLIPS, J., dissenting), that an agreement between the plaintiff and the defendant made prior to the passing of a decree in the suit, to the effect that the defendant should not press his defence but allow a decree to be passed for the full amount of the suit, that the defendant should make an arrangement for the satisfaction of the decree within a certain time after the decree and that the plaintiff should not execute or transfer the decree before that time is one that can be pleaded in proceedings taken in execution of the decree. *Per* ABDUR RAHIM, Offg. *C. J.*, and SESHAGIRI AYYAR, *J.*—The uniform practice of this Court has been to allow such defence to be raised in execution instead of allowing it to be made the subject of future litigation. *Per* PHILLIPS, *J.*—Such a plea ought not to be allowed in execution proceedings as the executing Court cannot go behind the decree but must execute the decree as it stands and as the allowance of such pleas will lead to an abuse of process of Court enabling parties to obtain collusive decrees. The rule of *stare decisis* is not applicable in such cases, for no rights are taken away but only the method of enforcing them is changed. *Held*, further by the Full Bench that such an agreement is not obnoxious to O. XXI, r. 2, Civil Procedure Code, as that rule relates to agreements after the passing of a decree. CHIDAMBARAM CHETTIAR *v.* KRISHNA VATHIYAR (1916).

I. L. R. 40 Mad. 233

EXECUTION SALE.

1. ———————— *Execution Sale proceeding—Order directing writ of attachment to issue, effect of—Objection that execution was then time-barred, if may be taken in subsequent proceedings—Necessity of proving non-service of notice—Onus—Entry in order-sheet that notice was served, value of.* An order made at one stage of execution proceedings cannot be questioned at a later stage unless the parties sought to be bound by such order had no notice of the proceedings. An order directing a writ of attachment to issue is in substance a determination that the decree was on the date of the order alive and capable of execution. An entry in the order-sheet that notice has been served does not constitute conclusive evidence of the *factum* of service, but there is no presumption that the entries are false and a judgment-debtor who alleges that the notice stated in the order-sheet in a previous execution proceedings to have been served on him was in fact not served must start his case.

EXECUTION SALE—contd

Other cases where the burden has been placed on parties relying on due service to prove such service distinguished BINDU BASHINI DASHYA v KESHAB LAL BOSE (1916) . **21 C. W. N. 945**

2. ———

[illegible] *obviously concocted—Failure of purchaser's pleader to support their genuineness and consequent admission that sale was illegal—Reversal of Trial Court's finding by High Court—Statement in judgment as to pleader's admission, if may be challenged* The record of the service of sale proclamations having been destroyed by fire, an application to set aside the sale was disposed of on other evidence The burden of disproving the *primâ facie* presumption that official acts were rightly carried out lying on the applicants, the evidence necessarily of a negative character was held by the trial Court which saw the wit

it was alleged, had been fixed on the various properties sold but which had no sign whatever of exposure to sun or rain, and the matter being put by the Court to the pleader for the purchaser, he was unable to answer these criticisms and admitted that he could not oppose the application to set aside the sale The High Court thereupon held that the whole story of the service of sale proclamations was false and decreed the appeal. *Held* by the Judicial Committee, that though the actual documents exhibited related to some of the properties only, the fact that these were concocted destroyed the whole fabric of the story put forward on behalf of the purchaser, and it was only right that he should be associated with the scheme of deceit which it was designed to carry out and that such association should be regarded as an important element in determining whether his defence was honest and just That the suggestion that the Judges of the High Court might have misunderstood the conduct of the pleader could not be entertaining in the absence of anything showing that the pleader called the attention of the Court to the fact that the statement in the judgment regarding his conduct was wrong while the matter was still fresh in the minds of the Judges and an affidavit filed before the Judicial Committee long afterwards by a person who said he was present at the trial and that the pleader made no admission as stated and that the pleader was unable to recall at its date whether in fact he made the admission or not was wholly insufficient to prove that the statement in the judgment was erroneous MADHU SUDAN CHOWDHRI v CHANDRABATI (1917)
21 C. W. N. 897

3. ——— *Proceeding, order in execution sale not reviewed or appealed against—Fresh application to set aside order, if lies, when order erroneous but within jurisdiction —Civil Procedure Code Act (V of 1908), ss 128, 157—Rules delegating judicial functions to ministerial officer, ultra vires under old Code, if validated by amended Code, without fresh promulgation* An order which is passed without jurisdiction is a nullity, which may be disregarded and need not be set aside But an erroneous order made by a Court having jurisdiction can only be set aside by review or appeal An order having been made in execution proceedings, and application does not lie to set aside the order on the ground that at the time the order was made the execution was barred. Such an order can only be set aside by review or appeal *Quære* Whether the Civil Procedure Code of 1908 by s 128 (i) which allows delegation of judicial duties validates rules which were in existence previous to the Code of 1908 when such delegation was *ultra vires* CHUTTERPUT SINGH v SADASOOK KOTARY (1917) **21 C. W. N. 1052**

EXECUTORY CONTRACTS.

——— **English rule, applicability of—**

See CONTRACT ACT (IX OF 1872), s 73
I. L. R. 40 Mad. 338

EX-PARTE CASE.

See SALE FOR ARREARS OF REVENUE.
I. L. R 44 Calc 573

——— **reinstatement of—**

See MORTGAGE **I. L R. 44 Calc. 393**

EX-PARTE DECREE.

See CIVIL PROCEDURE CODE, 1908, O IX, R 13 **I. L. R. 39 All. 13**

See CIVIL PROCEDURE CODE, 1908, O IX, R 13, O XLII R 3
I. L R. 39 All. 143

——— *Decree setting aside ex parte decree, effect of—Court if bound to revive and proceed with trial of suit* Where an *ex parte* decree is set aside by a Court of competent jurisdiction the effect is that the decree whereby the suit was terminated stands cancelled and the suit remains on the file of the Court as an undisposed of suit In these circumstances it is incumbent upon the Court to proceed with the trial of the suit and if the plaintiff does not wish to proceed with the trial of the suit the Court must dismiss it but if the plaintiff desires to proceed with it, it must be tried in accordance with law The fact that the suit terminated in an *ex parte* decree and not a consent decree makes no difference in point of principle DHARANIDHAR ADITYA v HEMANGA CHANDRA JANA 1917) . . . . . **21 C. W. N. 1037**

EX-PARTE ORDER.

See LIMITATION **L. R. 44 I. A. 218**

EXPERT EVIDENCE.

——— **in proof of custom—**

See CUTCHI MEMONS
I. L R. 41 Bom. 181

EX-PROPRIETARY RIGHTS.

See NORTH WEST PROVINCES RENT ACT (XII OF 1881)
I. L. R 39 All. 615

——— **agreement to surrender—**

See AGRA TENANCY ACT (II OF 1901), ss 10, 20, 83 . **I. L. R. 39 All. 173**

EX-PROPRIETARY TENANTS.

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), s. 36.
I. L. R. 39 All. 318

EXTENSION OF TIME.

See DECREE . I. L. R. 44 Calc. 954

F

FALLOW LANDS.

See ESTATES LAND ACT (MAD. I OF 1908), ss. 4, 27, 73, 143.
I. L. R. 40 Mad. 640

FALSE CHARGE.

See PENAL CODE (ACT XLV OF 1860), s. 211 . . I. L. R. 39 All. 715

FALSE DEFENCE.

——— in suit against vakil—

See PROFESSIONAL MISCONDUCT.
I. L. R. 40 Mad. 69

FALSE INFORMATION TO POLICE.

See SANCTION FOR PROSECUTION.
I. L. R. 44 Calc. 650

FARIAHS.

See JUTE . . I. L. R. 44 Calc. 98

FEES.

——— return of—

See BARRISTER . I. L. R. 44 Calc. 741

FEMALES.

——— right of, to inherit religious office—

See HINDU LAW—SUCCESSION.
I. L. R. 40 Mad. 105

FESTIVAL.

——— right to perform, in a Temple—

See HINDU LAW—CUSTOM.
I. L. R. 40 Mad. 1108

FINDING OF FACT.

See EVIDENCE ACT (I OF 1872), s. 32 (5).
I. L. R. 39 All. 426

——— *Finding, whether of fact or law, difficulty in determining—Exclusion of joint family, finding as to, if may be finding of law.* It is not always an easy matter to separate a finding of fact from a question of law. It may often be open to argument that the materials which have been accepted by one Court as establishing a certain conclusion were not in themselves sufficient for its support, if their legal weight had been properly measured and ascertained. A question of what constitutes exclusion from a joint estate may well, in many cases, be a question of law: *Held,* however, in this case, that the concurrent findings of the lower Courts were findings of fact and there were no reasons for reversing their findings. SHYAMANANDA DAS PAHARAJ *v.* RAM KANTA DAS (1917).
21 C. W. N. 1142

FISHERY.

——— *Right of owner of fishery in river to follow it when it changes its course.* The solution of the question whether the owner of a fishery in a river is entitled to follow it when it changes its course depends mainly on whether or not the invading river has lost its identity. It is impossible to prescribe any hard and fast rule for the purpose of ascertaining the conditions in which the river may be said to have lost its identity. The decision of the Privy Council in *Srinath Roy* v. *Dinabandhu Sen, I. L. R. 42 Calc. 489 : s.c. 18 C. W. N. 1217,* is confined to cases where the river made for itself a new channel where none existed. SARADA PRASAD RAY CHAUDHURY *v.* MUHAMAD YUSUF (1916).
21 C. W. N. 1007

FITNESS OF SURETY.

——— grounds of—

See SURETY . I. L. R. 44 Calc. 737

FIXED RATE HOLDING.

See AGRA TENANCY ACT (II OF 1901), s. 79 . . I. L. R. 39 All. 455

See MORTGAGE . I. L. R. 39 All. 539

FIXTURES.

——— removal of—

See COMPENSATION.
I. L. R. 44 Calc. 87

FORCIBLE EJECTMENT.

See RAILWAY PASSENGER.
I. L. R. 44 Calc. 279

FOREIGN JUDGMENT.

——— suit on—

See CIVIL PROCEDURE CODE, 1908, s. 13 (*b*) . . I. L. R. 40 Mad. 112

FORGERY.

——— antecedent—

See SANCTION FOR PROSECUTION.
I. L. R. 44 Calc. 1002

FRAUD.

See HINDU LAW—WIDOW.
I. L. R. 41 Bom. 93

See RAILWAY PASSENGER.
I. L. R. 44 Calc. 279

FRAUDULENT REPRESENTATION.

See PARTITION SUIT.
I. L. R. 44 Calc. 28

FRAUDULENT TRANSFER.

See ATTACHMENT.
I. L. R. 44 Calc. 662

FULL BENCH.

——— question referable to a—

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 134 . I. L. R. 40 Mad. 1040

G

GAMBLING.

——— in the courtyard of a mosque—

See BOMBAY PREVENTION OF GAMBLING ACT (BOM. IV OF 1887), s. 12.
I. L. R. 41 Bom. 14

GENERAL CLAUSES ACT (I OF 1868).

——— **s. 2 (*1*)—**

See PLEADER . **I. L. R. 44 Calc. 290**

GENERAL CLAUSES ACT (X OF 1897).

——— **s. 3, cl. (*52*)—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), s 59 . **I. L. R. 41 Bom. 384**

——— **s. 6 (c) and (e)—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O XXI, R 93 **I. L. R. 40 Mad. 1009**

——— **ss. 6, 7—**

See HABEAS CORPUS **I. L. R. 44 Calc. 459**

——— **s. 13—**

See PLEADER . **I. L. R. 44 Calc. 290**

GIFT.

See HINDU LAW—WIDOW **I. L. R. 39 All. 520**

See MAHOMEDAN LAW—GIFT. **I. L. R. 41 Bom. 372**

——— **by karta—**

See HINDU LAW—JOINT FAMILY PROPERTY . . . **L. R. 44 A. 201**

——— **substantially to charity—**

See MAHOMEDAN LAW—WAKF **L. R. 44 I. A. 21**

——— **to unborn person, validity of—**

See HINDU LAW—GIFT **I. L. R. 40 Mad. 818**

——— *Validity of gift—Death of donor before registration of deed—Registration by donee without consent of donor's legal representatives—Transfer of Property Act (IV of 1882), s 123—Registration Act (III of 1877), effect of* A deed of gift registered by the donee after the death of the donor without the consent of the legal representatives of the donor is valid. There is nothing in s 123 of the Transfer of Property Act which requires the donor to have the deed registered, all that is required is that he should have executed the deed. Once such an instrument is duly executed, the Registration Act allows it to be registered even though the donor may not agree to its registration, and upon registration the gift takes effect from the date of execution *Ramamirtha Ayyan* v *Gopala Ayyan*, [illegible] (1916) . . . . **I. L. R. 40 Mad. 204**

GOVERNMENT.

——— **assignment of jodi by—**

See INAMDAR . **I. L. R. 40 Mad. 93**

——— **jodi payable to—**

See INAMDAR . **I. L. R. 40 Mad. 93**

——— **right of, to a first charge in respect of jodi—**

See INAMDAR . **I. L. R. 40 Mad. 93**

GOVERNMENT OF INDIA ACT, 1915.

——— **s. 107—**

See CRIMINAL PROCEDURE CODE, s 145 **I. L. R. 39 All. 612**

GOVERNOR-GENERAL IN COUNCIL.

——— **powers of—**

See HABEAS CORPUS. **I. L. R. 44 Calc. 459**

GRANT.

See SARANJAM . **I. L. R. 41 Bom. 408**

——— *Grant by zamindar of Talabi Brahmottar tenure antecedent to Permanent Settlement—Tenures, permanent, hereditary, and transferable—Grantee, rights of, to minerals—Absence of express evidence that they formed part of the grant—Protraction of Indian litigation* A "grant" in India has not the special and technical meaning attached to the same word in English law A Talabi Brahmottar grant of a zamindar's village at a fixed rent made before the Permanent Settlement by the then Raja of Pacheto to the predecessors in title of the appellant, although found to be a permanent, hereditary and transferable tenure, was *held* (affirming the decision of the High Court) not to carry with it the mineral rights in the soil Minerals will not be held to have formed part of the grant, in the absence of express evidence to that effect. *Hari Narayan Singh Deo* v *Sriram Chakravarti*, *I. L. R 37 Calc 723*, *L R 37 I A. 136*, and *Durga Prasad Singh* v. *Braja Nath Bose*, *I L. R 39 Calc. 696*, *L R 39 I A 133*, followed Protraction of Indian litigation deprecated. SHASHI BHUSAN MISRA v JYOTI PRASAD SINGH DEO (1916) . . . **I. L. R. 44 Calc. 585**

GRANTOR AND GRANTEE.

See TITLE **I. L. R. 44 Calc. 771**

GROVE.

See AGRA TENANCY ACT (II OF 1901) ss 4, 167 **I. L. R. 39 All. 605**

GUARANTEE.

——— **contract of—**

See PRINCIPAL AND SURETY **I. L. R. 44 Calc. 978**

GUARDIAN.

See GUARDIANS AND WARDS ACT (VIII OF 1890), ss 39 AND 7 **I. L. R. 40 Mad. 672**

See LUNACY ACT (IV OF 1912), s 72 **I. L. R. 39 All. 158**

——— **natural, right of, to manage, pending appointment—**

See GUARDIANS AND WARDS ACT (VIII OF 1890), s 31 **I. L. R. 40 Mad. 775**

GUARDIAN AD LITEM.

See Civil Procedure Code, 1908, s. 151, O. IX, r. 13 . **I. L. R. 39 All. 8**

GUARDIANS AND WARDS ACT (VIII OF 1890).

See Mahomedan Law—Wakf.

I. L. R. 39 All. 288

——————— *Guardian if can be removed without opportunity to show cause—Ss. 34 (c) and 45 (1), cl. (b)—Punishment of guardian for non-payment of balance due from him—Considerations which should prevail with Courts in appointing and removing guardians.* The Guardians and Wards Act does not prescribe the procedure to be followed when the Court finds it necessary either of its own motion or at the instance of a party interested in the welfare of the infant to take steps for the removal of a guardian appointed by itself. But on the elementary rule that no order adverse to a party litigant should be made by a Court of Justice till he has been apprised of the charges brought against him and has been allowed reasonable opportunity to show cause, no order for removal of a guardian should be made till the guardian has been apprised of the charges brought against him and allowed reasonable opportunity to explain and, if possible, to defend his conduct. S. 45, sub-s. (1), cl. (b), authorises the Court to impose a fine on guardian, if the guardian fails to pay into Court the balance due from him on the accounts exhibited by him in compliance with a requisition under s. 34 (c). The payment contemplated has to be made in compliance with a requisition under s. 34 (d), and no fine can validly be imposed on a guardian for failure to comply with a requisition calling upon him to bring into Court a larger sum than found due from him on the accounts exhibited under s. 34 (c). That the sole point for considerations in cases where the management of the infant's property by the guardian in question is at issue is the welfare of the infant and the investigation should be from that point of view alone and it is eminently desirable that no person should be appointed guardian of the person or property of an infant without some enquiries about his fitness for the office. Jagannath Panja *v.* Mohesh Chandra Pal (1916).

21 C. W. N. 688

——— **s. 34**—*Order of appointment of guardian, conditional on giving security, when effective—Natural guardian's right to manage, pending appointment.* Where a guardian is appointed by a Court unconditionally, the order takes effect at once although under s. 34 of the Guardians and Wards Act (VIII of 1890), he may be required to furnish security subsequently. But where the order is conditional upon the furnishing of security, it does not take effect until the security has been furnished. Such a conditional order does not therefore deprive the natural guardian of his or her power of management of the minor's estate till the condition is satisfied. Hence an endorsement of a negotiable instrument belonging to the minor by the natural guardian before the condition is satisfied is not invalid. *Defries* v. *Creed, 34 L. J. (Ch.) 607*, followed. *Semble:* Rr. 240 to 242 and Forms Nos. 92 and 93 of the Civil Rules of Practice which make the appointment of a guardian take effect only on furnishing security, are not *ultra vires*. The dictum of Sadasiva Ayyar, J., to the contrary in *Gopam-*

GUARDIANS AND WARDS ACT (VIII OF 1890)—*concld.*

——— **s. 34**—*concld.*

mal v. *Srinivasa Ayyangar, 30 Mad. L. J. 508*, not followed. Subba Naick *v.* Rama Ayyar (1916).

I. L. R. 40 Mad. 775

——— **s. 39 and 7**—*Appointment by a Hindu father of a guardian for the person and property of his undivided minor son—Validity of appointment of guardian of property—Will written under instructions of testator partly on blank sheets previously signed, validity of.* A Hindu father is entitled to appoint by will, a guardian of the person of his minor son, but not of the properties in which his minor son will have a right by birth. A will appointing a guardian of such properties being invalid, it need not be set aside and cannot be set aside in an application made on behalf of the minor son under s. 39 of the Guardians and Wards Act for removal of the guardian. *Dr. Albeck* v. *Bathee Jellamma, 22 Mad. L. J. 247* and *Kanakasabai Mudaliar* v. *Ponnusami Mudaliar, 21 I. C. 848*, followed. The appointment of a guardian of the properties being invalid, the mother as natural guardian, becomes the guardian of the properties and if she be competent, there is no necessity for the Court to appoint her as such. Properties attached to *Tirumaligais* (houses of religious preceptors) are private and not trust properties. A will signed by the testator after completion on the sixth and the seventh sheets, is not invalid, because he signed some of the earlier sheets before the will was written, in them. *Narayanasami Chetty* v. *Pasumarthy Kannia Chetty, 28 I. C. 959*, followed. Alagappa Ayyangar *v.* Mangathai Ammangar (1916).

I. L. R. 40 Mad. 672

H

HABEAS CORPUS.

——— **writ of**—

See Jury, trial by. **I. L. R. 44 Calc. 723**

1. ——— *High Court, jurisdiction of—Power to issue writ—Procedure—Rights of the East India Company—Allegiance of the subject and sovereignty of the Crown—Prerogatives—Governor-General in Council, powers of legislation of—Emergency legislation—Act embodying provisions of Ordinances—Order for internment—Form of order—Warrant to arrest and imprison—Application for bail—Code of Criminal Procedure (Act V of 1898), s. 49—Emergency Legislation Continuance Act (I of 1915)—Ordinances III and V of 1914—Indian Councils Act (24 & 25 Vict., c. 67), ss. 22 and 23—East India Company's Act (26 Geo. III, c. 57) s. 29—Foreign Jurisdiction and Extradition Acts (XI of 1872), (XXI of 1879) and (V of 1903)—Interpretation Act (52 & 53 Vict., c. 63) s. 11—General Clauses Acts (I of 1868), s. 3 and (X of 1897), ss. 6 and 7.* Under s. 23 of the Indian Councils Act, 1861 (24 & 25 Vict. c. 67) no Ordinance can have any force of law for more than 6 months from its promulgation, but the Governor-General in Council has the power to pass an Act embodying the provisions of an Ordinance. The Governor-General in Council has also the power

HABEAS CORPUS—*concld*

to oust the jurisdiction of the Courts, and s 11 of Ordinance III of 1914, which is embodied in Act I of 1915 and which seeks to oust the juris diction of the Courts, does not offend against s *22 of the Indian Councils Act 1861* Act I of 1915 is not an Ordinance extended, but an Act It does not offend against the allegiance of the subject, or the sovereignty of the Crown It is not *ultra vires*, and this Court has no jurisdiction to call in question the orders which have been passed thereunder It is for the Governor General in Council to be satisfied on the materials before him The Court cannot call for the materials to examine them *In the matter of Rudolf Stal mann I L R 39 Calc 164, L tinger v Reg, L R 3 P C 282*
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392 The s
Alter Caufman v The Government of Bombay, I L R 18 Bom 636 The Queen v Burah, L R 3 A C 889, L R 5 I A 178, and *Reg v Halliday, [1916] 1 K B 738 20 C W N (Notes)* xci, referred to Where an Act repeals a previous Act, or a certain provision thereof and the re pealing enactment is itself subsequently repealed by another Act —*Held* that the last-repeal did *not since 1850 revive the Act or provision before* repealed unless words there are reviving them There was nothing in any of the Acts subsequent to the repealing Act (XI of 1872) which revived s 29 of the East India Company s Act (26 Geo III, c 57) Where a person is detained in cus tody and an application is made to the Court under s 491 of the Criminal Procedure Code —*Held*, that the usual procedure was to issue a Rule in the first instance, and not to order the production of the petitioner *In re* JEWA NATHOO AND OTHERS (1916) **I. L. R 44 Calc. 459**

2. ——————— *Jurisdiction—Arrest—Criminal Procedure Code (Act V of 1898), ss 54, 190, 191, 493—Procedure—Applications under s 491, to whom should be made—Arrest under s 54—' Reasonable suspicion" or 'credible information ' what to be based upon—Duties of police officer arresting—Practice* Applications under s 491 of the Code of Criminal Procedure ought to be made to the Judge sitting on the Original Side, and exercising the Ordinary Origi nal Criminal Jurisdiction of the High Court *In the matter of Rudolf Stallmann, I L R 39 Calc. 164*, referred to S 54 of the Code of Criminal Procedure gives very wide powers and ought to ... " Reasonable s spicion "
... arrest
... 4, must
... placed
... ider for
himself, before he can take any action under that section He cannot delegate his discretion, or take shelter under another person's belief or judgment, but must act on his own personal responsibility *Queen v Behary Singh, 7 W R Cr 3*, followed CHARU CHANDRA MAZUMDAR, *In re* (1916) . **I L R. 44 Calc. 76**

HARVEST.

——————— experimental, right of—

See ESTATES LAND ACT (MAD, ACT I OF 1908), ss 4, 27, 73, 143
I. L. R. 40 Mad. 640

HEADINGS OF STATUTES

See NON OCCUPANCY RAIYAT
I. L. R 44 Calc 267

HEIRS.

——————— sale by one of several heirs—

See MAHOMEDAN LAW—ALIENATION
I. L R. 40 Mad 243

HEREDITARY OFFICES ACT (BOM III OF 1874)

——————— ss 4 and 53 and (Bom Act V of 1886), s. 2—*Vatan—Family—Meaning of the term 'family,' as used in the Act* One Gopinath the original acquirer of a Vatan died without leaving any lineal descendent At the time of his death his nearest relations were his first cousins Girdhar lal Bhulabhai (senior uncle s son) and Mahasukh ra i Maharaji (younger uncle s son) In 18?8 two commutation Sanads were issued by Govern ment in respect of the Vatan and the grantees were Dinanath Girdharlal and Dinanath s great nephew Venilal Maneklal The actual possession and enjoyment of the Vatan property thus con tinued with the family of Girdharlal down to the time of its last male holder Pransukhram and afterwards with his widow until her death On widow s death the defendants (daughter and daughter s sons of Pransukhram) retained posses sion The plaintiffs, therefore, representing the branch of Mahasukhram claimed to be entitled *to possession of the Vatan property on the strength of s 2 of Bom Act V of 1886* Both the lower Courts held that the plaintiffs were members of the family qualified to inherit and as such ex cluded the female defendants In second appeal it was contended that the respondents (plaintiffs) were not descended from the original Vatandar and therefore they were not members of his family and were not entitled to oust the females in possession *Held* that the term family' as used in the Vatan Act, 1874 meant those descended from a common progenitor who must be a Vatandar, and that the respondents were not entitled to oust the appellants from posses sion BAI LAXMI *v* MAGANLAL (1917).
I. L. R. 41 Bom. 677

HEREDITARY OFFICES ACT (BOM. III OF 1874 AS AMENDED BY BOM. ACT III OF 1910).

——————— ss 25, 36, 63 and 64—*Mhari Vatan —Suit to be declared a Vatandar—Civil Court—Jurisdiction* The plaintiffs by a suit filed in the Civil Courts sought a declaration that they were the Vatandars of a *Mharki* Vatan It was con tended that although the civil Courts had juris diction to make a declaration as to Vatandars claiming *Patils or Kulkarnis* Vatans the Courts had no jurisdiction to make any declaration as regards *Mharki Vatans Held*, that it was com petent to the Civil Courts to grant a declaration that the plaintiffs were Vatandars of a *Mharki* Vatan *Ramchandra Dabholkar v Anant Sat Shenvi, I. L R 8 Bom 25*, followed RAOJI FAKIRA *v*. DAGDU (1916) **I L. R 41 Bom. 23**

HIGH COURT.

——————— power to interfere with the dis cretion of District Judge—

See DIVORCE ACT (IV OF 1869), s 14
I. L. R. 41 Bom. 28

HIGH COURT—*concld.*

———— **revisional jurisdiction**—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 439.
I. L. R. 41 Bom. 560

HIGH COURT, JURISDICTION OF.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 195, SUB-S. (6).
I. L. R. 41 Bom. 631

See HABEAS CORPUS.
I. L. R. 44 Calc. 459

See SANCTION FOR PROSECUTION.
I. L. R. 44 Calc. 816

HIGH COURT RULES.

See PLEADER . **I. L. R. 44 Calc. 290**

HIGH COURT RULES (APPELLATE SIDE).

———— **Ch. II, r. v.**—

See SANCTION FOR PROSECUTION.
I. L. R. 44 Calc. 816

HIGH COURT RULES (ORIGINAL SIDE).

———— **rr. 397, 399**—

See COMMISSIONER.
I. L. R. 41 Bom. 719

HIGH SEAS.

———— **offence committed on**—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) s. 188.
I. L. R. 41 Bom. 667

HINDU JOINT FAMILY.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. I, R. 3.
I. L. R. 40 Mad. 365

HINDU LAW.

See BANKRUPTCY.
I. L. R. 40 Mad. 581

See CUTCHI MEMONS.
I. L. R. 41 Bom. 181

See EVIDENCE ACT (I OF 1872), s. 91.
I. L. R. 41 Bom. 466

HINDU LAW—ADOPTION.

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 118.
I. L. R. 41 Bom. 728

1. ———— *Suit to have alleged adoption declared valid—Evidence of adoption—Absence of any deed or written record of adoption—No entries of expenditure on ceremonies in account books—Adopted child's name not changed and child left with its natural parents.* In this appeal which arose out of a suit by the natural father of the appellant to have his adoption declared valid, their Lordships of the Judicial Committee (affirming the decision of the Court of the Judicial Commissioner of the Central Provinces) *held,* on the evidence, that the alleged adoption was never made. It appeared that though the suit might well have been brought in the life time of the alleged adoptive father, who consistently denied that the adoption ever took place, it was not commenced until some months after his death. There was no deed of adoption or any other formal record of the event. *Sootrugun Sutputty* v. *Sabitra Dye, 2 Knapp P. C. 287,* referred to. There was no reference to any expenditure on the ceremony in the account books of either the natural or the adoptive father. *Lal Kunwar* v. *Chiranji Lal I. L. R. 32 All. 104 ; L. R. 37 I. A. 1,* referred to. No feast was proved to have taken place on the occasion of the alleged adoption; the ceremonies said to have been performed were of the briefest possible description; no notification was made to the authorities; the child's name was not changed, and he was never taken to live with his adoptive parents, or recognised by them in any way; and all the surrounding circumstances and conditions not only did not support the adoption, but made it highly improbable that the ceremony of adoption was ever performed in regard to the appellant. DIWAKAR RAO *v.* CHANDANLAL RAO (1916) . **I. L. R. 44 Calc. 201**

2. ———— *Adoption—Dvyamushyayana adoption—Presumption.* In every case of a *nitya dvyamushyayana* form of adoption, there must be an agreement to that effect: such an agreement must be proved by the person setting up the *dvyamushyayana* adoption, like any other question of fact, as much in the case of the adoption of an only son of a brother as in any other case of such an adoption. *See* LAXMIPATIRAO *v.* VENKATESH (1916) . **I. L. R. 41 Bom. 315**

3. ———— *Adoption by a minor widow—Want of independent, disinterested advice—Validity of adoption—Ratification by widow after attaining majority, effect of.* A widow, authorized by her husband to adopt a boy *if* and *when* she chose, adopted her own brother, when she was eleven years of age on the interested advice of her father. *Held,* that the adoption made by the widow while a minor and without independent advice, was void *ab initio* and could not be therefore validated by subsequent ratification. *Sri Rajah Venkata Narasimha Appa Row* v. *Sri Rajah Rangayya Appa Row, I. L. R. 29 Mad. 437,* dissented from. SATTIRAJU *v.* VENKATASWAMI (1917)
I. L. R. 40 Mad. 925

4. ———— *Adoption by one adjudged a lunatic under the Lunatic Act (XXXV of 1858) valid only, if of sound mind at the time—Presumption of continuity of unsound mind—Onus of proving the contrary.* The effect of an

HINDU LAW—ADOPTION—*contd*

adjudication under the Lunacy Act (XXXV of 1858) that a person is a lunatic, is to raise a presumption that he continued to be of unsound mind until the contrary is shown *Van Grutteen* v *Foxwell*, *[1897] A C*, *658*, and *Snook* v, *Watts 11 Beavan*, *105*, followed Though the effect of an order under the Act appointing a manager for the properties of a lunatic is not to incapacitate him from making an adoption till the order is set aside, still, unless it is proved that the lunatic was of sound mind at the time he is alleged to have made the adoption, the adoption is invalid. *Semble* Adoption is not an act which amounts to an alienation of pro

that effect SESHAMMA *v* PADMANABHA RAO (1916) . . . . **I L. R. 40 Mad. 660**

5 ——————— *Adoption of an*

Death of adopted son in 1881—Suit by latter's widow against former widow for possession—Decree —Death of former widow in 1902—Suit by reversioners of the original owner in 1905—Suit for possession against widow and alienees from both widows if, barred—Title of reversioners, if, extinguished—Limitation Act IX of 1871, Art 129 and s 29—Later Limitation Acts (XV of 1877 and IX of 1908) effect of—Res judicata—Sudra ascetic or Tambiran—Entry into order of—Right of inheritance, if forfeited—Texts as to Yati, applicability of, to Sudras—Usage—Civil Procedure Code (Act V of 1908), O XLI, r 4—Decree on appeal *A*, a Hindu, died in 1849 without issue, leaving a widow *C* She adopted *B*, an orphan, as a

The latter was in possession of the properties till 1876 when he was dispossessed by *C* *T* died issueless in 1881, leaving a widow who also died in 1882 *M*, who succeeded to the estate as *T*'s heiress, sued *C* in 1887 and recovered possession of the estate from her *C died in 1902* *In 1905*, the plaintiffs, claiming to be the reversioners of *A* on *C*'s death, sued to recover the estate of *A* from the defendants Some of the defendants were alienees from *M* who was the fourth defendant, some others were alienees from *C*, while the first defendant claimed a fourth share in the estate as the widow of one *K* who was a co reversioner along with the plaintiffs but had become a *Tambiran* before *C* died in 1902 The defendants other than the first, contended *inter alia* that the suit was barred by limitation and by the rule of *res judicata* *Held*, (i) that a suit by the reversioners of *A* for recovery of possession of such of *A*'s properties as were in the possession of the heirs of the adopted son had become barred in 1874 under art 129 of the Limitation Act (IX of 1871) and that a title to such property was acquired by the heirs of the adopted son under s 29 of the same Act and could not be affected by the provisions of the later Limitation Act XV of 1877 or Act IX of 1908, (ii) that, although the plaintiffs who were the actual reversioners of *A* in 1902, were not in existence when the twelve years limited by art 129 expired, their title as reversioners was barred, (iii) that, consequently, the present suit as against the fourth defendant (the widow of the adopted son) and her alienees was barred by limitation, (iv) but that in respect of the properties alienated by the widow of *A*, the present suit for recovery of possession from her alienees was not barred by limit
Mohun
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that the
of *res judicata* by the decision in the previous suit instituted by *M*, against *C* *Hari Nath Chatterjee* v *Mothur Mohun Goswami I L R 21 Calc 8*, distinguished The texts of Hindu Law as to disinheritance applicable to *Yati* or *Sanyasi* do not apply to Sudra ascetics unless a usage to this effect is established *Dharma puram Pandara Sannadhi* v *Vira Pandiyan Pillai*, *I L R 22 Mad 302* and *Harish Chandra Roy* v *Atir Mahmud*, *I L. R 40 Calc 545*, referred to *Held* (on the evidence), that no usage was established in this case, consequently that the first defendant's husband was not excluded from inheriting as a co reversioner with the plaintiffs by reason of his having entered the order of *Tambirans* before the succession opened in 1902 and that the first defendant was entitled to recover one fourth share in the estate in right of her husband *Held*, *further, that where an* appeal was preferred by some only of the alienees who were defendants but no appeal was preferred by the other alienees or the alienor who were also defendants, a decree can be passed in the appeal dismissing the suit in favour of the latter defendants also *Kulaikada Pillai* v *Viswanatha Pillai*, *I L R 28 Mad 229*, and *Subbarayalu Naidu* v *Pappammal*, Second Appeal No 537 of 1914, followed Where some of the appellants, who were defendants, died and their legal representatives were not brought on the record *in the* appeal *Held*, that *it* was competent to the Court under O XLI, r 4, to set aside the decree as regards the whole of the plaintiff's claim and *not merely in respect* of the interest of those appellants only whose appeals had not abated *Chintaman* v *Gangabai*, *I L R 27 Bom 284*, followed *Dhullaloor Subbayya* v *Paidiganlam Subbayya*, *I L R 30 Mad 470*, referred to. SOMASUNDARAM CHETTIAR *v* VAITHILINGA MUDALIAR (1916) . . . **I. L. R. 40 Mad 846**

HINDU LAW—ALIENATION.

1. ——————— *Onus of proof of legal necessity—Recitals in deeds as to necessity—Evidence of representation to purchasers—Value of recital after lapse of time when actual proof of enquiry has become impossible—Attestation of deed, effect of, as evidence of knowledge of contents, or of consent*

Ratan Singh, I. L. R. 39 Calc

HINDU LAW—ALIENATION—*contd.*

57, followed. Recitals in deeds cannot by themselves be relied upon for the purposes of proving the assertions of fact which they contain. They can only be evidence as between the parties to the conveyances and those who claim under them. After a long period, however, has elapsed between the alienation and the suit to set it aside when all those who could have given evidence on the relevant points have grown old or have passed away, a recital consistent with the probabilities and circumstances of the case assumes greater importance and cannot lightly be set aside. The recital is clear evidence of the representation, and if the circumstances are such as to justify a reasonable belief that an enquiry would have confirmed its truth, then when proof of actual enquiry has become impossible the recital coupled with such circumstances would be sufficient evidence to support the deed. Where the total value of the estate was small and there were expenses like the husband's *sradh* and any debts against his estate, which had to be paid, besides the necessity for the maintenance of the widows which need not be measured merely by a sufficient sum to support existence, the periods at which, between 1848 and 1865, the properties were sold the small sums for which the sales were made, and the disposition of the property piece by peace with fair regularity for 16 years all went to support the view that the widows found themselves unable to provide sufficient maintenance out of the income of the estate, until their means came to an end in 1865, and the circumstances were such as would be sufficient to justify the assumption that proper enquiry would have disclosed that necessity existed. There was only the one fund for payment and if money was needed to pay debts, the amount of money available for maintenance would to that extent be reduced, and if the debts had been paid by the widows out of borrowed money it would make no difference whether the necessity to pay debts, or to maintain themselves was stated in the recitals as reason for the sale. Attestation of a deed proves no more than that the signature of an executing party has been attached to a document in the presence of a witness. It does not involve the witness in any knowledge of the contents of the deed, nor affect him with notice of its provisions. If it had been quite impossible for either of the widows lawfully to dispose of any interest in the properties, and it was shown that the witness knew the nature of the deed, more value might be given to his attestation, but by itself it would neither create an estoppel nor imply consent. *Hari Kishen Bhagat v. Kashi Prasad Singh, I. L. R. 42 Calc. 876; L. R. 42 I. A. 64*, referred to. Comments were made by their Lordships on the delay that had occurred between the decrees of the High Court in August 1909 and the setting down of the appeals for hearing in April 1916, for which no sufficient reason appeared. Unexplained, it constituted a grave reproach to the administration of justice. All the respondents had been unjustly attacked in the lawful possession of property, and for seven years had been subject to the anxiety and distress of knowing that the judgment of the High Court in their favour was subject to the inevitable uncertainties of the law. Their Lordships said that had the appeals succeeded they would have refused the appellants any costs of the appeals unless they could have cleared themselves of the imputation of having needlessly protracted the proceedings; and that course would be taken in similar cases in the future, if occasion arose. BANGA CHANDRA DHUR BISWAS *v.* JAGAT KISHORE ACHARJYA CHOWDHURI (1916).

I. L. R. 44 Calc. 186

2. ———————— *Mitakshara school —Joint family property—Alienation by father not for necessity and not for antecedent debt, son if bound by.* Joint property of a Mitakshara Hindu family cannot be alienated as against co-shares by way of mortgage or otherwise, except for necessity, or for the payment of an antecedent debt quite distinct from the debt incurred in the mortgage itself, and the sons of the mortgagors are not bound by any such alienation by reason of any pious obligation to pay their father's debt. JOGI DAS *v.* GANGA RAM (1917).

21 C. W. N. 957

3. ———————— *Joint Hindu family —Alienation of joint property of family governed by Mitakshara law—Mortgage not for family necessity or to pay antecedent debt—Suit on mortgage—Non-liability of sons and grandsons of mortgagors.* Where a mortgage had been made by some of the members of a Hindu joint family governed by the Mitakshara law who joined in borrowing Rs. 1,200 on the security of the property of the joint family of which they were the heads without the consent of their co-partners, and it was found that the mortgage was *primâ facie* invalid as against the family property as being neither for an antecedent debt, nor for any proved necessity of the joint family: *Held*, that the mortgage could not be upheld on the doctrine laid down in the case of *Mahabeer Prasad v. Ramyad Singh, 1 B. L. R. 190; 20 W. R. 192*, which was distinguishable on the ground that there were special circumstances in that case which did not exist in the present case, and it therefore did not lay down the general law. The general law was laid down in *Madho Parshad v. Mehrban Singh, I. L. R. 18 Calc. 157, 163: L. R. 17 I. A. 194, 196*, which governed this and all other cases of the kind, and according to those principles the mortgage in suit was invalid as against the sons and grandsons of the mortgagors. LACHMAN PRASAD *v.* SARNAM SINGH (1917) . **I. L. R. 39 All. 500**

4. ———————— *Joint Hindu family —Sale of ancestral property by father without legal necessity—Sale set aside at instance of sons—Vendee not entitled to refund of consideration by sons.* A sale of the property of a joint Hindu family made by the father for an antecedent debt or for the payment of an antecedent debt is binding on the sons; but if the consideration for such sale is not for any of the purposes mentioned above, the sons are entitled to recover the property. But in such case the sons are not liable to refund the purchase money to the vendee. *Ram Doyal v. Suraj Mal, 23 Indian Cases 891. Manbahal Rai v. Gopal Misra. All. Weekly Notes, 1901, p. 57*, and *Chandra Deo Singh v. Mata Prasad, I. L. R. 31 All. 176*, referred to. *Koer Hashmat Rai v. Sundar Das, I. L. R. 11 Calc. 396*, dissented from. MADAN GOPAL *v.* SATI PRASAD (1917) . . . **I. L. R. 39 All. 485**

5. ———————— *Sale by father of joint family property, without legal necessity—Suit by*

HINDU LAW—ALIENATION— *contd*

sons to repudiate the sale—Mesne profits payable by purchase from date of such repudiation Where the father as manager alienates joint Hindu family property without legal necessity and the sons repudiate the sale a purchaser who had no notice that the father was incompetent to sell the property is in equity only liable to pay mesne profits from the date of such repudiation *Mugun Chunder Chuttoraj* v *Surbessur Chuckerbutty, 3 W R 479, Dalhina Mohan Roy* v *Saroda Mohan Roy, I L R 21 Calc. 142,* and *Grish Chander Lahiri* v *Soshi Shikharesuar Roy, I L R 27 Calc 95, L R 27 I A 100,* referred to BHIRGU NATH CHAUBE v NARSINGH TIWARI (1916)
I L. R. 39 All. 61

HINDU LAW—CUSTOM

——————— *Right to perform festival in a temple—Ubayakar—Right of married daughter of last ubayakar—Special custom—Onus of proof* The right to perform a festival in a temple is a secular privilege and does not confer on the holder an office The daughter of the last *ubayakar* or

Chiranjivi v *Raja Manikya Rao, 27 Mad L J 179, Raja Rajesuari Ammal* v *Subramania Archakar 30 Mad L J 222,* and *Vengamuthu* v *Pandaveswara, I L R 6 Mad 151* referred to PANKAJAMMAL v THE SECRETARY OF STATE FOR INDIA (1916) **I L. R. 40 Mad 1108**

HINDU LAW—ENDOWMENT.

1 ——————— *Construction of deed of endowment—Deed contended to be invalid as being not a real dedication to idol—Appointment of members of donor s family as mutawallis—Deed held valid as creating an endowment* The question in this appeal was as to the construction of a deed of endowment executed and registered by a Hindu on the 20th of July, 1898 In a suit after his death to set aside the deed, the appellants as next reversioners, claimed that no valid endowment had been created, or was intended to be created by it Their Lordships in dismissing the appeal distinguished the cases of *Sonatun Bysack* v *Juggutsoondree Dossee 8 Moo I A 66* and *Ashutosh Dutt* v *Doorga Churn Chatterji, I L R 5 Calc 438*, L. R. 6 I A 182, cited in support of the appellants' contention, on the ground that, although nominally there was a gift to the idol, that gift was so cut down by subsequent disposition that there was no gift to the idol such as to make the property pass as an absolute and entire interest in his favour *Held*, that there was no such cutting down in the present case. There was in the beginning a clear expression of an ... the benefit ... rest of the ... by a direc ... had already ... lied for the upkeep of the idol itself and the repair of the temple and the other half was to go for the upkeep of the *mutawallis* There was no reason why the donor should not nominate the members of his family as the *mutawallis* of the temple, and he had done so *And there was nothing in that* which militated against the propriety of his earmarking a certain part of the money to remunerate them as managers so long as they should so continue By the registration of the deed the executant showed that it represented an intention which he desired to treat as carried into execution JADU NATH SINGH v THAKUR SITA RAMJI (1917)
I. L. R. 39 All 553

2 ——————— *Endowment—Debt, contracted by head of adinam—Onus of proof of necessity Suit to recover money borrowed on mortgage of endowed property—Recognition of debt binding the property by successive heads of institution—Account books not produced* The appellant sued to recover money advanced on a mortgage bond dated 4th November 1897 to the head of an adinam or mutt, and to enforce the mortgage against the property of the mutt which was hypothecated as security for the loan The deed was for Rs 20,000 the balance of principal and interest due on a former bond of 24th June 1883, and it stated that *the bond is granted as was the former one over the lands belonging to the adinam The bond of* 1883 had been executed for the sum of Rs 14 946 for the balance due on a promissory note, and recited that it was ' for the expenses of the afore said adinam And the promissory note for the original loan stated that the sum received by us to day in cash for the expenses of our adinam is Rs 14 000 That was taken in December 1881 shortly after the termination of some litigation necessary in the interests of the adinam The binding nature of the debt was recognized by successive managers of the mutt who paid from time to time interest on the money and other amounts towards the discharge of the debt over a period of 26 years *Held,* that though the onus was on the lender to show that the loan was made for the purposes of the mutt and was a necessary expense of the institution itself, yet where the debt had been so recognized as binding, and dealt with on that basis, their Lordships were of opinion that there was a sufficient body of evidence that the loan was made for purposes binding on the mutt and there was no evidence to the contrary In favour of this view, it was an important fact that the account books of the mutt were not produced in which it is the habit of the head or manager to make entries with much detail and elaboration forming a current record on the financial side of the history of the institution The parties to a suit should bring before the Court their best evidence and when it is not produced the Court is justified in concluding that it would if brought into Court not support the case of the party omitting to produce it MURUGESAM PILLAI v MANICKAVASAKA PANDARA SANNADHI (1917) **I. L. R 40 Mad 402**

3 ——————— *Endowment—Power of shebait to grant permanent lease of endowed property—Necessity— Benefit to estate —Lease at fixed rent—Same principles apply to building site in village street as to agricultural lands—Question as to existence of ancient custom—Question of mixed law and fact—Concurrent findings—Privy Council, practice of—Error in form of finding of custom* In this appeal it was held by their Lordships of the Judicial Committee that the grant, at a fixed rent, and on payment of a premium of a permanent lease by a *shebait* of a portion of the lands dedicated to the worship of the idol of which he is a trustee, was invalid as against his successor in the *shebaitship*, as in their Lord

HINDU LAW—ENDOWMENT—*contd.*

ships' opinion, the evidence did not establish that the *shebait* was constrained by any necessity to make such a lease, or that any benefit accrued to the estate from it. *Devasikamony Pandara Sannadhi* v. *Palaniappa Chettiar, I. L. R. 34 Mad. 535,* affirmed. Where, as in this case, there is no deed of endowment forthcoming, the rules, according to which the endowed property and its income are to be dealt with in order to carry out the intention of the original endower, can only be ascertained by inference from the practice proved by evidence to have been followed in the particular case: *Ram Parkash Das* v. *Anand Das, I. L. R. 43 Calc. 707, 716 ; L. R. 43 I. A. 73, 78,* referred to. The rules must not be inconsistent with or repugnant to the very nature and purpose of the endowment. Both the worship of the idol and the preservation and use of the dedicated property to support and maintain that worship must be assumed to have been intended to be perpetual. A rule therefore which authorized the *shebait* arbitrarily at his own wish and pleasure to alienate any of the dedicated property would be so repugnant to the whole purpose and object of the endowment that it could not be held to embody the original endower's intention. A *debottar* estate may be mortgaged to secure the repayment of money borrowed and applied to prevent its own extinction by sequestration. *Hunooman Persaud Panday* v. *Babooee Munraj Koonweree, 6 Moo. I. A. 398, 423, 424, Prosunno Kumari Debya* v. *Golab Chand Baboo, L. R. 2 I. A. 145, 151, 152 ; 14 B. L. R. 450, 469,* and *Konwar Doorganath Roy* v. *Ram Chunder Sen, I. L. R. 2 Calc. 341, 352, 353 ; L. R. 4 I. A. 52, 62, 64,* referred to. In these cases there was to be found no indication as to what was in this connection, the precise nature of the things to be included under the description "benefit to the estate": and no definition of it applicable to all cases can be given. It is a breach of duty on the part of a *shebait, unless constrained by an* unavoidable necessity, to grant a lease in perpetuity of *debottar* lands at a fixed rent however adequate that rent may at the time of granting, by reason of the fact that by this means the *debottar* estate is deprived of the chance it would have, if the rent were variable, of deriving benefit from the enhancement in value, in the future, of the lands leased. *Maharanee Shibessouree Devia* v. *Mothooranath Acharjo, 13 Moo. I. A. 270, 275, Mayandi Chettiar* v. *Chokalingam Pillay, I. L. R. 27 Mad. 291, 299 ; L. R. 31 I. A. 83, 88,* and *Abhiram Gossami* v. *Shyama Charan Nandi, I. L. R. 36 Calc. 1003, 1013 ; L. R. 36 I. A. 148, 165,* referred to. These cases dealt with agricultural lands, but there was no reason why the principles they establish, should not apply to a building site in the street of a village as in the present case. No authority had been cited to show that a *shebait* is entitled to sell *debottar* lands solely for the purpose of investing the price of it so as to bring in an income larger than that derived from the *debottar land itself.* Questions of the existence of an ancient custom are questions of mixed law and fact. Although therefore the two Courts had purported to find that a local custom modifying the law had been proved, there were no such concurrent findings of fact as according to the practice of the Board it was bound to accept. Neither of the Courts below, moreover, had stated its conclusion in a form

HINDU LAW—ENDOWMENT—*concld.*

which amounted to a finding that any ancient custom such as modified the law existed in the locality. PALANIAPPA CHETTY *v.* DEVASIKAMONY PANDARA SANNADHI (1917).

I. L. R. 40 Mad. 709

4. ———————— *Mutt, head of—Power of, to grant permanent lease—Limitation Act (IX of 1908), Art. 134—Permanent lease, a transfer within the article.* Although the head of a *mutt* is entitled to appropriate part of the income of the properties of the *mutt* to his own maintenance, he is only a trustee in respect of those properties, and he is ordinarily incompetent to grant a permanent lease of the *mutt* properties. A permanent lease for an annual rent is a transfer for a valuable consideration within Art. 134 of the Limitation Act (IX of 1908) and the transferee acquires an indefeasible title to the permanent lease by possession for 12 years as provided by the article. Knowledge that the title of the transferor is only a limited one cannot by itself disentitle the transferee to the benefits of Art. 134. *Ram Parkash Das* v. *Anand Das, I. L. R. 43 Calc. 707, Subbaiya Pandaram* v. *Mahammad Musthapa Maracayar, Appeal No. 13 of 1916,* and *Ram Kani Ghose* v. *Raja Sri Hari Narayan Singh Deo Bahadur, 2 C. L. J. 546,* followed. BALASWAMY AYYAR *v.* VENKATASWAMY NAICKEN (1916) . . . . **I. L. R. 40 Mad. 745**

HINDU LAW—GIFT.

———————— *Gift to unborn person, validity of—Settlement deed in 1889—Gift to daughter for life, then to her unborn children, effect of—Alienation by daughter—Suit by adopted son of settlor—Right of reversioner to sue—Hindu Transfers and Bequests Act (Madras Act I of 1914)—Suit decided before the Act—Act passed pending appeal—Act, if applicable to the appeal—Power of Appellate Court in passing decrees on appeal—Civil Procedure Code (Act V of 1908), O. XLI, r. 33—Declaratory decree, nature of—Discretion of the Court in such cases.* A Hindu executed a deed of settlement in 1889 by which he demised some properties to his daughter, "in order that she may enjoy them during her lifetime and that after her they should be enjoyed *with all rights* by her sons and daughters who may be alive"; the daughter alienated some of the properties in 1907; the plaintiff, the adopted son of the settlor, claiming to be the nearest reversioner filed a suit in 1912 for a declaration that the alienations were without necessity and not binding on the reversioners. He impleaded the settlor's daughter as the first defendant, and her daughter, born in 1889, as the second defendant and the alienees as the other defendants. The Hindu Transfers and Bequests Act (Madras Act I of 1914) came into operation during the pendency of the appeal in the lower Appellate Court. Both the Lower Courts dismissed the suit. *Held,* on second appeal, (i) that the Hindu Transfers and Bequests Act (I of 1914) was retrospective in its operation and was applicable to this case; (ii) that the gift in favour of unborn children of the daughter of the settlor was valid; (iii) that consequently the plaintiff was not the nearest reversioner entitled to maintain the suit; (iv) that the rule that a remote reversioner can sue if the nearest reversioner is a female is inapplicable when the latter is entitled to an absolute estate; (v) that there

HINDU LAW—GIFT—*contd.*

was no collusion between the first and the second defendant by reason of the fact that the latter's guardian put forward an alternative contention on a point of law setting up an absolute title in favour of the first defendant, (vi) that the authority of an Appellate Court is not limited to determining the question whether the original Court was right according to the law in force at the date of its judgment, but was entitled to pass such decree or order as was in accordance with any later enactment which came into operation subsequent to such date *Kanakayya* v *Janardhana Padhi, I L R 36 Mad 439*, and *Govinda Parama Guruvu* v *Dandusi Prudhanu, 20 Mad L J 528*, referred to, and (vii) that a declaratory decree is a matter of discretion and when there was already one and there might be more than one preferential heir before the plaintiff, the discretionary relief could be properly refused MUTHUSWAMI AYYAR *v* KALYANI AMMAL (1916)

I L R 40 Mad. 818

HINDU LAW—INHERITANCE

——————— *Inheritance—"Samanodaka," meaning of—Reversioner, claim by—Onus of proof* According to Mitakshara and the view prevalent in Southern India, *samanodaka* relationship is confined to such of the *gottrajas* as are within fourteen degrees from the common ancestor *It is incumbent on a plaintiff seeking to succeed to property as an heir, affirmatively to establish the particular relationship which he puts forward* He is also bound to satisfy the Court that, to the best of his knowledge, there are no nearer heirs. It is for those who claim [illegible] descent from a common ancestor, cannot be preferred to a *bandhu* RAMA ROW *v* KUTTIYA GOUNDAN (1916) **I L. R. 40 Mad 654**

HINDU LAW—JOINT FAMILY.

See HINDU LAW—JOINT FAMILY PROPERTY

1. ——————— *Joint family—Will* [illegible] *daughter with* [illegible] *interested in* [illegible] *n* A father [illegible] e consent of his adult son and with the consent of his relations who are interested in a minor son of his, bequeath a portion of his property to his daughter provided *the portion is reasonable in extent* *Brijraj Singh* v *Sheodan Singh, I L R 35 All 337*, *Kudutamma* v *Narasimhacharyulu, 17 Mad L J 528*, *Amirillah Sundara Ramayya* v *Cherla Seethamma, 21 Mad L J 695*, and *Arunachela Pillai* v *Sampurnathachi, 27 Mad L J 485*, applied PATRA CHARIAR *v* SRINIVASA CHARIAR (1917)

I L R 40 Mad 1122

[illegible] *Whether his interest bound—*[illegible] *knowledged by registered deed—Undue influence—Father's interest bound by the deed—Time, when the share is ascertained* The plaintiffs *P* and *B* and defendant No 2, their father, constituted a joint Hindu family. On September 19th, 1901, defendant No 2 sold certain family land to defendant No 1 Plaintiff *B* was born subsequently to the date of the alienation and was a minor when the suit was filed The plaintiffs sued to *set aside the sale deed on the ground that it was* taken from defendant No 2 by undue influence and for no consideration The Subordinate Judge dismissed the plaintiffs' suit holding that the consideration for the deed was an antecedent debt which though barred by time was acknowledged by defendant No 2 by a registered deed which was binding on the plaintiffs The lower appellate Court reversed the decree and directed that plaintiffs and defendant No 2 be restored to possession On appeal to the High Court by defendant No 1, the question was raised whether the time barred debt acknowledged by the registered deed was not good consideration for the alienation of the defendant No 2's interest in the property *Held,* that defendant No 2's interest was bound by the deed *Held,* also, that defendant No 1 acquired the half share in the alienated property to which defendant No 2 was entitled at the date of the alienation owing to the fact that the minor plaintiff was not then born NARO GOPAL *v* PARAGAUDA (1916)

I. L. R 41 Bom. 347

3 ——————— *Mitakshara—Joint Hindu family—Mortgage of joint Hindu family property by father—Mortgage executed at time of loan—Liability of sons in suit to enforce mortgage—Antecedent debt—Burden of proof* The exception relating to antecedent debts which covers the [illegible] no power either of mortgage or sale of the estate to meet such debt is one which should not be extended and should be very carefully guarded A loan made to the father on the occasion of a grant by him of a mortgage on the family estate is not an antecedent debt to hold otherwise would be to extend unduly and improperly the whole scope of the exception provided by the Mitakshara law The decision of the majority of a Full Bench in the case of *Chandradeo Singh* v *Mata Prasad, I L R 31 All 176*, approved The statement of the law in *Nanomi Babuasin* v *Modhun Mohun, I L R 13 Calc 21, 35, L R 13 I A 1, 14*, by Lord HOBHOUSE as to the establishment by the Courts in India of 'the [illegible] their rights [illegible] antecedent [illegible] s for their [illegible] does not give any countenance to the idea that the joint family estate can be effectively sold or charged in such manner as to bind the issue of the father except where the sale or charge has been made in order to discharge an obligation not only antecedently incurred, but incurred wholly apart from the ownership of the joint estate or the security afforded or supposed to be available by the joint estate The exception applied only to the case where the father's debts have been incurred irrespective of the credit obtainable from immovable assets which did not personally belong to him but were joint family property *If it* were extended further, the exception would be

HINDU LAW—WIDOW—*concld.*

of gift. If the transfer be with the consent of the nearest reversioner, it takes effect because it affords evidence of the propriety of the transaction, in other words, it justifies the transaction on the ground of legal necessity. KHAWANI SINGH *v.* CHET RAM (1916) . **I. L. R. 39 All. 1**

4. ———————— *Widow—Acceleration of estate by the widow to next reversioners—Entire interest of the widow must be accelerated—Alienation by widow not supported by legal necessity—Subsequently adopted son not bound by the alienation—Divesting of estate by adoption—A man cannot take advantage of his own fraud—Maxim.* A Hindu widow, who was in possession of her husband's property, mortgaged it with defendant No. 1 in 1893. The plaintiffs, who were next reversioners, sued to set aside the alienation on the ground that it was not supported by consideration. The suit ended in an award by arbitrators, which provided: (i) that the plaintiffs were entitled to redeem the mortgage; (ii) that defendant No. 1 was thereupon to reconvey the property to the plaintiffs; (iii) that the widow was to surrender to the plaintiffs her right, title and interest in the property and (iv) that out of the property so reconveyed the plaintiffs were to give to the widow a house and eighteen *bighas* of land for her life as maintenance. No decree was passed in terms of the award; and parties took no action under the award. In 1906, defendant No. 1 created a sub-mortgage on the property; and executed a rent-note to the sub-mortgagee. Sometime afterwards, the plaintiffs took a reconveyance of the property from the defendant No. 1 but without making any payment to him; they paid off the sub-mortgage; and they took an assignment from the sub-mortgagee of his rights under the sub-mortgage. In 1909, the widow adopted defendant No. 2 who was the natural son of defendant No. 1. Defendant No. 2 was placed in possession of the property by his natural father. The plaintiffs filed the present suit to recover possession of the property. *Held*, dismissing the suit, that the award which was the basis of plaintiffs' claim, could not be supported either as an acceleration by the widow of her interest, which to be valid required the surrender of the whole of her interest in the property, or as an alienation which was not for a legal necessity and which therefore was not binding on defendant No. 2. *Held*, further, that defendant No. 2 was not precluded from contesting the plaintiffs' claim to possession, inasmuch as he was not guilty of any fraud at all, and as he had not thereby gained any advantage in the special issue to be determined between him and the plaintiffs. An acceleration by a Hindu widow enjoying a life-estate in favour of the next reversioner is valid only if the acceleration is of the whole of her interest in the property. In an alienation by a Hindu widow of her husband's estate, the consent of the reversioners is no more than a factor in the proof of legal necessity. A true acceleration differs from alienation for legal necessity. The two legal notions are not only irreconcilable, but virtually antagonistic. MOTI RAIJI *v.* LALDAS JEBHAI (1916) . . . **I. L. R. 41 Bom. 93**

HINDU LAW—WILL.

———————— *Will, construction of—Bequest of life-estate to widow and remainder to grandsons born and to be born—Madras Hindu Transfers and Bequests Act (I of 1914), s. 2, cl. (2), effect of, on—Period of distribution to future grandsons, happening after the Act—Right of all grandsons born during widow's life, to take—Vested interest of grandson existing on the date of will.* A Hindu bequeathed by his will dated 1905 a life-estate to his widow and an absolute estate thereafter to *S*, a son of his daughter then born, and to other sons of the daughter that might be born thereafter. The testator died in 1906 and *S* died in 1909. In a suit by *S*'s widow against the testator's widow and another son of the daughter born during the course of the suit for a declaration that the plaintiff was solely entitled to the estate after the death of testator's widow and for an injunction to restrain the widow from wasting the estate, and alienating the same: *Held*, on a construction of the will, (i) that the testator by interposing a life-estate intended *all* his grandsons to take his estate, who might be born before the death of the widow, which was the time fixed for distribution; (ii) that by s. 2, cl. (2), of Madras Act I of 1914, the bequest in favour of the unborn grandsons was good as the disposition in their favour was, under the will, to take effect only after the date of the Act; and (iii) that as the plaintiff's deceased husband had a vested interest under the bequest she was entitled to maintain the suit and to a share in the estate *along* with other grandsons of the testator who might be born before the death of the testator's widow. *Bhagabati Barmanya* v. *Kalicharan Singh, I. L. R. 38 Calc. 468*, referred to. VENKAYAMMA *v.* NARSAMMA (1916).

I. L. R. 40 Mad. 540

HINDU SON.

———— **undivided, liability of, for debt of bankrupt—**

See BANKRUPTCY **I. L. R. 40 Mad. 581**

HINDU TRANSFERS AND BEQUESTS ACT (MAD. I OF 1914).

See HINDU LAW—GIFT.

I. L. R. 40 Mad. 818

HINDU WIDOW—

See HINDU LAW—WIDOW.

HINDU WILLS ACT (XXI OF 1870).

———————— *Construction of will, testator's intention—Succession Act (X of 1865), s. 82, a bequest "to my daughter on attaining majority," whether creates an absolute or limited interest—S. 111, gift over to brother in case daughter dies childless—Whether the gift can take effect if the daughter does not die childless before the estate is distributable—The period of distribution, whether at the date of the daughter's attaining majority or of the death of the daughter childless—Meaning of the word santan, whether limited to male descendants or means issue generally—Reversionary interest, expectant on the happening of a specified uncertain event, if can be sold in execution.* Plaintiff had a brother *U* and a step-brother, and each had one-third share in ancestral property which was the subject-matter of the suit. *U* made a will bequeathing his share to his daughter and appointing plaintiff as executor, who was to make over the estate to the daughter on her attaining majority. There was a provision in the will that if the daughter died childless, then the executor,

HINDU WILLS ACT (XXI OF 1870)—*contd*

i e., the plaintiff, would get the properties in *U*'s share Before probate had been issued the whole property was sold in execution of a money decree, under which plaintiff said, he alone was liable Plaintiff brought the present suit to establish his title to one third of the property which, he said, he inherited under his brother *U*'s will Plaintiff alleged that the original share which he inherited from his father alone passed under the sale, but the reversionary interest in the one third share which he acquired under his brother's will could not pass by the sale *Held,* that under the Hindu Wills Act, in which are incorporated some of the provisions of the Indian Succession Act, the property did not pass to the plaintiff Under s 82 of the Succession Act, the daughter took an absolute interest, as there was nothing in the will to cut down the clear term of the gift ' to my daughter on attaining majority" The principle laid down in *Bhobotarini Debi* v *Peary Lal Sanyal, I L R 24 Calc 646 s c I C W N. 578,* followed Under s 111 of the Succession Act, the gift over, in favour of the plaintiff, must take effect before the period of distribution It was impossible to say that the period of distribution in this case would be the death of the daughter unless it could be held that the daughter took less than an absolute interest As the daughter took an absolute interest, the period of distribution under the terms of the will could not be postponed later than either the date of the death of the testator or the date when the daughter attained majority, whichever event happened later The gift to the plaintiff could take effect if the daughter died during the testator's lifetime or if she died during her minority The daughter having survived the testator and having attained majority, the plaintiff took no interest in the one third of the property under the will *Held,* further, that if the plaintiff got a reversionary interest expectant on the death of his niece to one third of the property under *U*'s will, that interest could be sold, dealt with, and taken in execution without the will being proved, and that interest passed by the sale in execution to the defendants *Santan* (सन्तान) means ' issue" generally, and is not limited to male issue KUMUD KRISHNA MANDAL v JOGENDRA NATH SARKAR (1917)

21 C. W. N. 854

HIRE-PURCHASE AGREEMENT.

———————— *Agreement to hire machinery, whether conveyance or agreement—Stamp duty—Stamp Act (II of 1899), s 2 (10), Sch I, art 5, cl* (c) A hire purchase agreement not being an agreement to purchase but simply an agreement to hire the machinery in question with an option on the part of the hirer to purchase, comes within the meaning of Art 5, cl (c) of Sch I to the Stamp Act, and is, therefore, liable to a stamp duty of eight annas *Helby* v *Mathews, [1895] A C 471,* referred to LINOTYPE AND MACHINERY, LD , AND THE WINDSOR PRESS OF CALCUTTA, *In re* (1916) . **I. L. R. 44 Calc. 72**

HOLIDAYS.

———— judgments pronounced on—

See APPEAL IN FORMA PAUPERIS

I L. R. 40 Mad. 687

HOSTILE FIRMS.

———— status of—

See CONTRACT WITH ALIEN ENEMY

I. L R. 41 Bom 390

HOSTILE FOREIGNERS' TRADING ORDER, 1914.

See CONTRACT WITH ALIEN ENEMY

I. L. R 41 Bom. 390

HOUSE-DRAIN.

See PUBLIC DRAIN

I. L. R. 44 Calc. 689

HOUSE-SITES.

See MIRASI VILLAGE

I L R. 40 Mad. 410

HUNDI.

See NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881), s 22

I. L R. 39 All 86

See NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881) ss. 64 76

I L. R. 39 All. 364

HUSBAND.

———— liability of—

See WIFE'S COSTS

I. L. R. 44 Calc. 35

HUSBAND AND WIFE

See DIVORCE . **I L. R. 44 Calc. 1091**

See DIVORCE ACT (IV OF 1869), s 14

I. L. R. 41 Bom. 36

HYPOTHECATION DECREE.

See LIMITATION ACT (IX OF 1908), SCH I, ARTS 120, 132

I. L R. 39 All. 74

I

IMMORAL PROPOSAL

See LURKING HOUSE TRESPASS

I L. R. 44 Calc. 358

IMMOVEABLE PROPERTY.

See SALE OF IMMOVEABLE PROPERTY

INAM.

See ESTATES LAND ACT (MAD I OF 1909) s 3 (2) (d)

I. L R. 40 Mad 389

See ESTATES LAND ACT (MADRAS ACT I OF 1908), ss 3 (2) AND 8

I. L. R. 40 Mad. 684

See REGISTRATION ACT (XVI OF 1908), s 17. **I. L. R. 41 Bom 510**

———— distinction between resumption and enfranchisement of—

See CHARITABLE INAMS

I L R. 40 Mad. 939

———————— *Shrotriyam—Enfranchisement, effect of—Right of grantee to quarry stones—Right of Government to levy royalty or seigniorage fees—Crown grants, rule of, construction of—Acts and declarations of Government—Declarations and*

INAM—*concld.*

findings of Inam Commissioner, effect of Where a village was granted as a shrotriyam inam in A.D. 1750 by the Nawab of Carnatic and was enfranchised by the Government in 1862, and it appeared that the Government acquired since enfranchisement some lands in the village under the Land Acquisition Act on payment of compensation to the inamdar and on another occasion purchased from him stones quarried by him in the village, but subsequently the Government levied royalty or seigniorage fee on stones quarried by the inamdar in the inam village: *Held,* that the inamdar acquired under the grant the free-hold in the lands subject only to the payment of the quit-rent fixed thereon, and that the Government was not entitled to levy a royalty or seigniorage fee on stones quarried in the village. In construing the words of a grant, the ordinary rule is that the same principles of common sense and justice must apply whoever may be the grantor. Where the words are not sufficiently clear for gathering the intention of the grant, then the doctrine "that if the king's grant can endure to two intents, it shall be taken to the intent that makes most for the king's benefit" may perhaps apply. The primary duty of the Court is to try to give a meaning to the document evidencing the grant and to see whether by itself it is not self-contained and plain. When the deed of grant stated, "A perpetual shrotriyam was granted" and that the grantee was "to appropriate to his own use the produce of the seasons," etc. *Held,* that the grant was unambiguous and clear and conveyed all that the grantor had in the soil. The title-deeds of the Inam Commissioner confer no higher title than what was originally granted, but any declaration or finding by the Inam Commissioner regarding the nature and extent of the grant will bind the Government. *Gunnaiyan* v. *Kamakchi Ayyar, I. L. R. 26 Mad. 339,* referred to. *Hari Narayan Singh* v. *Sriram Chakravarti, L. R. 37 I. A. 136,* distinguished. THE SECRETARY OF STATE FOR INDIA *v.* SREENIVASA CHARIAR (1916) . **I. L. R. 40 Mad. 268**

INAM COMMISSIONER.

———— declaration and findings of, effect of—

See INAM . **I. L. R. 40 Mad. 268**

INAMDAR.

1. ———————— *Jodi payable to Government—Right of Government to a first charge—Assignment of jodi by Government—Right of assignee to a charge—Assignment of jodi to a zamindar or mittadar under permanent sanad—Right of zamindar or mittadar to a charge.* Jodi payable by an inamdar to the Government, where it has not been assigned, is recoverable by the Government as revenue and is a first charge on the interest of the inamdar. A zamindar or mittadar, who under his sanad has a right to collect jodi payable by an inamdar to the Government, has no charge for arrears of jodi on the interest of the inamdar. *Per* WALLIS, *C.J.*—Where the Government assigned its revenue to an inamdar, the latter did not acquire a charge upon the land but was left to recover rent from the occupiers under the Madras Rent Recovery Act (VIII of 1865). *Per* SESHAGIRI AYYAR, *J.* If the Government assigned the right to collect jodi or other revenue *as such,* the assignee would have a first charge: he would be entitled to the security which the Government had

INAMDAR—*concld.*

although he might not be entitled to all the statutory remedies which the assignor had. Case law on the subject reviewed. SUBBAROYA GOUNDAN *v.* RANGANADA MUDALIAR (1915).

I. L. R. 40 Mad. 93

2. ———————— *Suit to recover assessment from tenant—Tenant's liability to pay customary rent—Judi—Limitation Act (IX of 1908), Sch. I, Art. 131—Recurring right—Limitation—Demand and refusal.* Lands situated in Inam villages not being in the actual possession of Inamdars themselves and falling under the calculation of Government Judi are liable in turn to pay customary rent assuming that there has been no survey and assessment or contractual rent agreed upon to the Inamdars who are directly liable to Government for the Judi. The payment of assessment is a recurring right falling within the contemplation and language of Art. 131 of the first Schedule of the Limitation Act (IX of 1908). In order that such a recurring right should be time-barred, it is necessary for the defendant to show that there has been a definite demand and refusal. Mere omission on the part of the person having such right to exercise it will not start a period of adverse possession under the Article. GANESH VINAYAK *v.* SITABAI (1916).

I. L. R. 41 Bom. 159

INDIAN ARMY OFFICER.

See CIVIL PROCEDURE CODE (1908), s. 60.

I. L. R. 39 All. 308

INDIAN COUNCILS ACT, 1861.

———— s. 23—

See CONTRACT WITH ALIEN ENEMY.

I. L. R. 41 Bom. 390

INFORMANT.

See SANCTION FOR PROSECUTION.

I. L. R. 44 Calc. 650

INHERENT JURISDICTION.

See REMAND . **I. L. R. 44 Calc. 929**

INHERITANCE.

See HINDU LAW—INHERITANCE.

See BURMESE LAW.

I. L. R. 44 Calc. 379

See CUSTOM . **I. L. R. 44 Calc. 749**

———— Sudra ascetic, right of, to—

See HINDU LAW—ADOPTION.

I. L. R. 40 Mad. 846

INJUNCTION.

———— suit for—

See TRADE-NAME, INFRINGEMENT OF.

I. L. R. 41 Bom. 49

INJURED PERSON.

See SPECIFIC RELIEF ACT (I OF 1877), s. 45 . . **I. L. R. 40 Mad. 125**

INSOLVENCY.

See PROVINCIAL INSOLVENCY ACT (III OF 1907).

1. ———————— *Debtor and creditor—Adjudication—Debtor presenting his own petition—Application for discharge—Abuse of process of Court—Jurisdiction to annul adjudication—Presidency Towns Insolvency Act (III of 1909), ss. 14, 15, 21,*

INSOLVENCY—*contd*

38—Rules of the Insolvency Act, 1909, r 142 (a)

Trilok Nath v *Badri Das*, ... *Aramayal Sabhapathy Moodliar I L R 21 Bom 297*, and *Uday Chand Maity*, v *Ram Kumar Khara, 12 C L J 400*, referred to MALCHAND *v* GOPAL CHANDRA GHOSAL (1916) I L. R 44 Calc 899

2. ——————— *Order of administration—Attachment by creditor prior to order—Sale* ... *Presidency*

attached property such as attaches ... a creditor who

Gopal, I L R 29 Calc ... *Sundar Das Khetri, I L R 42 Calc 72, L R 41 I A 251*, followed *Hasluck* v *Clark*, [1898] 2 ... *Pickering, Ex* ... v ... d *Pinder*, ... *Re* PREM LAL DHAR (1917)

I. L R 44 Calc 1016

3. ——————— *Practice—Presidency Towns Insolvency Act (III of 1909), s 36, whether applications under, may be made ex parte—S 112, rules framed thereunder—Rules 17, 18 19 and 30* According to the rules framed by the Calcutta High Court under s 112 of the Presidency ... unders 36 may ... *parte* KISSORY

I L R 44 Calc 286

and the dealings or properties ... which such information will relate The Court

INSOLVENCY—*concld*

can, in a proper case, even after the discharge of the insolvent, make an order for the examination of a person under s 36 There is nothing in the Insolvency Act to limit the powers of the Court under that *section to the period before the insolvent's* discharge though, having regard to s 43, it may be that the provisions of s 36 will not be applicable to the insolvent himself after his discharge An order for examination under s 36 *should not be refused merely because litigation may ultimately ensue between the Official Assignee* and the person sought to be examined *Re* HARIPADA RAKSHIT *Ex parte* BINODINI DASSEE (1916) I. L R. 44 Calc 374

all the requirements of the Act have been ... *Dismissal of petition as "an abuse of process of Court"* ... *discharg* ... Insolver ... declared an insolvent where all the conditions specified in the Act have admittedly been satisfied, he is entitled to an order of adjudication This does not depend on the discretion of the Court, but is a statutory right of which he cannot be deprived by the Court on the ground that his petition is "an abuse of the process of the Court" To this effect there is a current of authority in India that the stage at which to visit with its due ... debtor is when ... the Court, ... CHATRAPAT ... LACHMIRAM (1916) I L R. 44 Calc 535

INSOLVENCY COURT.

See CIVIL PROCEDURE CODE (1908) s 11.
I L R 39 All 626

INSOLVENCY PROCEEDINGS.

——————— *Order disallowing a claim to goods seized by the Official Assignee after* ... *Suit to set aside the order, maintain* ... made ... *Mad 1113* ABDUL ... ASSIGNEE OF MADRAS (1912)

I. L. R 40 Mad. 1173

INSOLVENT.

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909) s 18 (3)
I. L. R 41 Bom 312

See PROVINCIAL INSOLVENCY ACT (III OF 1907), ss 16, 22
I. L. R. 39 All. 204

See PROVINCIAL INSOLVENCY ACT (III OF 1907), s 36 . I. L. R. 39 All. 95

——————— execution of fictitious sale-deed by—

See PROVINCIAL INSOLVENCY ACT (III OF 1907) s 18 I L R. 39 All 63

INSTALMENT DECREE.

See Civil Procedure Code (1908), O. XXI, r. 2; O. XXXIV, rr. 4, 5. **I. L. R. 39 All. 532**

INSTRUCTIONS.

See Barrister. **I. L. R. 44 Calc. 741**

INSURANCE.

See Jute. **I. L. R. 44 Calc. 98**

INTENTION.

See Lurking House-trespass. **I. L. R. 44 Calc. 358**

——— **to defraud—**

See Stamp-duty. **I. L. R. 44 Calc. 321**

——— **to mortgage—**

See Evidence. **L. R. 44 I. A. 236**

INTEREST.

See Contract with alien Enemy. **I. L. R. 41 Bom. 390**

See Penalty. **I. L. R. 44 Calc. 162**

See Principal and Surety. **I. L. R. 44 Calc. 978**

——— **postponing payment of—**

See Mortgage. **I. L. R. 44 Calc. 542**

INTERLOCUTORY APPEAL.

See Parties, substitution of. **L. R. 44 I. A. 218**

INTERNMENT.

——— **order for—**

See Habeas Corpus. **I. L. R. 44 Calc. 459**

INTERPRETATION OF STATUTES.

See Land Acquisition. **I. L. R. 44 Calc. 219**

IRRIGATION BY PERCOLATION.

See Madras Irrigation Cess Act (VII of 1856), s. 1 (*b*). **I. L. R. 40 Mad. 58**

IRRIGATION CESS ACT (MAD. VII OF 1865).

——— *Conditions necessary to entitle Government to levy water-cess—Extent of right to water—Engagement by land-holder with Government.* In this case the decision in *Prasad Row* v. *The Secretary of State for India, I. L. R. 40 Mad. 886*, was followed, on the admission of the respondent that the rights of the parties were governed by it. Ambalavana Pandara Sannadhi v. The Secretary of State for India (1917). **I. L. R. 40 Mad. 909**

——— **s. 1 (*b*)**—*Opinion of Collector that irrigation is beneficial, not a judicial one, revisable by Courts—"Irrigation by percolation" covers "irrigation by subsoil water."* Construing s. 1 (*b*) of the Madras Irrigation Cess Act (VII of 1865), the Full Bench *held*:—(*a*) that it is not obligatory on the Collector to certify under s. 1 (*b*) of the Act that the irrigation is beneficial, and (*b*) that the words "irrigation by percolation" mean not only irrigation by means of water flowing on the surface of the land irrigated, but cover also cases where subsoil water is taken by the roots of trees. *Held* also, that the opinion of the Collector that the irrigation in any particular case is beneficial to the land is not a judicial one capable of being revised by a Civil Court. *Secretary of State for India* v. *Swami Naratheeswarar, I. L. R. 31 Mad. 21*, approved. The Secretary of State for India v. Mahadeva Sastrigal (1916). **I. L. R. 40 Mad. 58**

IRRIGATION CESS ACT (MAD. VII OF 1865)—*contd.*

——— **s. 1**—*contd.*

——— **s. 1, provs. 1 and 2**—*As amended by Madras Act V of 1900—Right of Government to levy cess for irrigation purposes—Zamindaris settled at Permanent Settlement—Sanads, construction of—Cultivation extended and crop grown not customary at date of sanad—Engagement by zamindar with Government—Right to flowing water—Madras Land Encroachment Act III of 1905.* The appellants sought to recover from the Secretary of State for India, the respondent, sums of money paid under protest in respect of water cesses levied by the Government of India under Madras Act VII of 1865 (as amended by Madras Act V of 1900), the portions applicable to the case being s. 1 and pros. 1 and 2. The lands in suit were contiguous to the river Vamsadhara, and sometime prior to the Permanent Settlement extensive works had been carried out to supply the district with water from the river, and the water was distributed throughout the district by means of branch channels and subsidiary channels ending in many instances in village tanks and reservoirs. The Government carved out of the land four zamindaris, on each of which they assessed a permanent revenue or *jumma*, and had them put up to public auction, and each purchaser received a sanad. These sanads did not mention any water rights. They contained (*inter alia*) agreements by the zamindars to encourage their ryots to improve and extend the cultivation of the land. Subject to his observing the conditions of the sanad, each zamindar was authorized to hold the zamindari in perpetuity for himself and his heirs. One of the four zamindaris (Urlam) was purchased by the appellant's predecessors-in-title at a sale for arrears of revenue and the other three were bought at various times by the Government. The sluices of only one of the channels were on the appellant's lands, but he used for irrigation purposes water from the river through all the four channels. *Held*, that the Permanent Settlement was an engagement with the Government within the meaning of pro. 1 of s. 1 of the Act VII of 1865. That the effect of the Permanent Settlement was to vest the channels with their head sluices and branch and subsidiary channels, and the tanks or reservoirs in the zamindars through or within whose zamindaris the same respectively passed or were situate, and to give the zamindar the right or easement of taking water from the river for irrigation purposes. That the zamindar on whose estate the head sluices and initial portions of each of the four channels in question were situate, obtained under his sanad the right to take water from the river (assuming that it belonged to Government), and such rights was to be measured by the size of the channel, or the nature and extent of the sluices and weirs governing the amount of water which entered the channel, and not by the purposes for which the grantor or his tenants had been accustomed to use water from the channel prior to the date of the grant. That after the water was lawfully taken into the channel the Government had no further

JUDICIAL OFFICERS' PROTECTION ACT (XVIII OF 1850)—*concld.*

——— s. 1—*concld.*

possible to decide whether the case came within the purview of Act XVIII of 1850. IZZAT ALI *v.* MUHAMMAD SHARAFAT-ULLAH KHAN (1917).
I. L. R. 39 All. 516

JURISDICTION.

See INHERENT JURISDICTION.

See ACQUITTAL. **I. L. R. 44 Calc. 703**

See ADJUDICATION.
I. L. R. 44 Calc. 899

See ADMINISTRATION SUIT.
I. L. R. 44 Calc. 890

See AGRA TENANCY ACT (II OF 1901), s. 79 . **I. L. R. 39 All. 455**

See CIVIL PROCEDURE CODE (1908), s. 20 (c) . **I. L. R. 39 All. 607**

See CIVIL PROCEDURE CODE (1908), s. 24 (4) . **I. L. R. 39 All. 214**

See CIVIL PROCEDURE CODE (1908), s. 115.
I. L. R. 39 All. 101

See CRIMINAL PROCEDURE CODE, s. 110.
I. L. R. 39 All. 139

See CRIMINAL PROCEDURE CODE, s. 145.
I. L. R. 39 All. 612

See CRIMINAL PROCEDURE CODE, s. 195.
I. L. R. 39 All. 657

See CRIMINAL PROCEDURE CODE, s 576.
I. L. R. 39 All. 91

See HABEAS CORPUS.
I. L. R. 44 Calc. 76

See HEREDITARY OFFICES ACT (BOM. ACT III OF 1874 AS AMENDED BY BOM. ACT III OF 1910), ss. 25, 36, 63. 64.
I. L. R. 41 Bom. 23

See JURY, TRIAL BY.
I. L. R. 44 Calc. 723

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), s. 35.
I. L. R. 39 All. 357

See SMALL CAUSE COURT.
21 C. W. N. 784

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), s. 18.
I. L. R. 39 All. 297

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), s. 233 (*k*).
I. L. R. 39 All. 469

See WAIVER . **I. L. R. 44 Calc. 10**

——— **of Civil and Revenue Courts**—

See AGRA TENANCY ACT (II OF 1901), ss. 4, 167 . **I. L. R. 39 All. 605**

See AGRA TENANCY ACT (II OF 1901), s. 167 . . **I. L. R. 39 All. 675**

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), ss. 203 TO 207.
. **I. L. R. 39 All. 711**

——— **to try offence committed on high seas**—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 188.
I. L. R. 41 Bom. 667

JURISDICTION—*concld.*

1. ——— *Criminal misappropriation or breach of trust—Receipt of money and conversion at head office of a company in Madras Presidency—Loss to complainant in a district in Bengal—Jurisdiction of Court at latter place to try the offences—Criminal Procedure Code (Act V of 1898), ss. 179, 181(2).* The jurisdiction of a Court to try the offences of criminal misappropriation or breach of trust is governed by s. 181 (2) and not s. 179 of the Criminal Procedure Code. Loss, though a normal result, is not an ingredient of the offences of criminal misappropriation or breach of trust, and not, therefore, a "consequence" within the meaning of s. 179. A complaint of offences under ss. 403 and 406 of the Penal Code against an official of an Insurance Company having its head office at B in the Madras Presidency, where the money was received and the conversion took place, cannot be tried by a Court at K where loss ensured to the complainant. *Ganeshi Lal* v. *Nand Kishore, I. L. R. 34 All. 487,* and *Rambilas* v. *Emperor, (1914), Mad. W. N, 894,* followed. *Queen-Empress* v. *O'Brien, I. L. R, 19 All. 111,* and *Langridge* v. *Atkins, I. L. R. 35 All. 29,* dissented from. *Colville* v. *Kristo Kishore Bose, I. L. R. 26 Calc. 746, Emperor* v. *Mahadeo, I. L. R. 32 All. 397,* distinguished. SIMHACHALAM *v.* EMPEROR (1916).
I. L. R. 44 Calc. 912

2. ——— *Leave to withdraw suit by the Appellate Court—Subsequent Suit—Res Judicata—Civil Procedure Codes—(Act XIV of 1882), s. 373 (Act V of 1908), O. XXXIII, r. 1.* The plaintiff brought a suit for the declaration of his title in respect of certain rights and for other reliefs. This suit was dismissed by the Court of first instance on the merits after the evidence had been gone into. The plaintiff, thereupon, preferred an appeal. At the hearing of the appeal he made an application for leave to withdraw from the suit under s. 373 of the Code of Civil Procedure, 1882, on the grounds of a formal defect and of his inability to produce the necessary evidence in time, and obtained an order in the presence of the defendants to the effect that the appeal be dismissed with costs and the plaintiff's suit be allowed to be withdrawn with leave for fresh action for the same subject-matter, if not barred. Subsequently, the plaintiff brought a fresh suit against the same parties on the same cause of action as in the previous suit. *Held,* that the ground on which the order was made by the Appellate Court was not a ground which was contemplated by s. 373 of the Civil Procedure Code and that, therefore, the order was without jurisdiction. *Kharda Coal Co., Ld.* v. *Durga Charan Chandra, 11 C. L. J. 45,* and *Mabulla Sardar* v. *Hemangini Debi, 11 C. L. J. 512,* referred to. KALI PRASANNA SIL *v.* PANCHANAN NANDI (1916) . . . **I. L. R. 44 Calc. 367**

JURISDICTION OF CIVIL COURT.

See LAND ACQUISITION.
I. L. R. 44 Calc. 219

JURISDICTION OF HIGH COURT.

See HIGH COURT, JURISDICTION OF.

See SANCTION FOR PROSECUTION.
I. L. R. 44 Calc. 816

——— **conviction and sentences by Mewas Agent**—

See SCHEDULED DISTRICTS ACT (XIV OF 1874), s. 7. **I. L. R. 41 Bom. 657**

JURISDICTION OF HIGH COURT—*contd*

1. ——— *(Act V of su side,* High under ... Code of Civil *Charan, 11 11 C L J 9 All L J 358, Umesh Chandra Palodhi,* v *Rakhal Chandra Chatterjee, 15 C W N. 666, Buratha Gunta* v

justice that a judicial order which may possibly affect or prejudice any party cannot be made unless he has been afforded an opportunity to be heard. *Ajant Singh* v *F T Christian, 17 C W N 862,* referred to *Banni Singh* v *Kishun Lall Thakur, I L R 41 Calc 632,* dissented from RAJENDRA LAL SUR *v* ATAL BEHARI SUR (1916) **I. L R 44 Calc. 454**

2. ——— *Criminal Procedure Code (Act V of 1898), ss 185, 527, scope of— Doubt" meaning of—Transfer—Questions of convenience and expediency—Power of the High Court over Courts outside its territorial limits—Form of order* Held, by the majority (WOODROFFE J dissenting) The High Court has power under s 185 of the Criminal Procedure Code to make an order in respect of an enquiry instituted or trial commenced in a Court situated beyond its territorial limits *Hiran Kumar Choudhury* v. *Mangal Sen 17 C W N 761, Emperor* v *Chaichal Singh, 9 Cr L J 581,* approved S 185 is not restricted to proceedings instituted in a Court subordinate to the High Court where the application is made The section invests that High Court with authority to determine the question within the local limits of whose Appellate Criminal Jurisdiction the offender actually is Where jurisdiction is given to more Courts than one for the same offence if a

India Banking and Insurance Company, I L R 41 Calc 305, dissented from The order should be limited to a declaration that the case should be inquired into or tried by the Court of the Chief Presidency Magistrate in Calcutta This will leave it open to the prosecution or the applicant to take such steps as they may be advised. *Per* WOODROFFE, J S 185 does not deal with transfer or decisions on the ground of mere convenience raised by the accused but with doubt as to competency S 185 *is not designed to cut down admitted juris*

afforded to the accused to be heard In the second place, s 527 contemplates an order for transfer, and recourse may possibly be had thereto if an

JURISDICTION OF HIGH COURT—*concld*

order made by one High Court under s 185 is disregarded by another CHAPU CHANDRA MAJUMDAR *v* EMPEROR (1916) **I. L. R. 44 Calc 595**

JURY.

See CRIMINAL PROCEDURE CODE, ss 267, 418, 423 . **I L. R 39 All. 248**

JURY, TRIAL BY.

——— *Jurymen, communication with by stranger, and by Clerk of the Crown—Police Officer's presence near jury room—Communication of deliberation by jurymen before or after case is over—Habeas corpus, writ of—Jurisdiction—Criminal Procedure Code (Act V of 1898), s 491—Letters Patent, 1865, cls 25 and 26—Trial, vitiation of—Practice* Per CURIAM It is highly undesirable that a juror should have any communication with

remarks the juryman does not look upon as worthy of consideration, cannot have the effect of invalidating a trial A mere casual question (which evidently had nothing whatever to do with the case), by a juryman to a Police officer in charge of the jury, it not even being alleged that the Police officer spoke in reply to the juryman cannot be any ground for invalidating the trial Though it is undesirable that a police constable should be stationed in any position in which he can hear the deliberations of the jurymen, still if the presence of the constable has not in any way affected the deliberations of the jurors, either by interfering with or inconveniencing them, the accused is not in any way prejudiced The learned Judge was only doing his duty when he twice sent the Clerk of the Crown to the jury and asked them (in accordance with the practice in the High Court) if he could give them further assistance on any of the many points which were for their consideration, there being no less than 17 charges The jury are ill advised to talk with anybody except their fellow jurymen about the case Whether the case is still going on or after the case is over, the jury would be ill advised to have any communication with anybody except their fellow jurymen as to what happened in the jury room *The Queen* v *Murphy L R 2 P C Ap Ca 535* referred to *Per* CHAUDHURI, J It is well established that a writ of *habeas corpus* is not granted to persons convicted or in execution under legal process, including persons in execution of a legal sentence after

there has been a miscarriage of justice as alleged in this case, the proper course is to carry the ... *Emperor* ... rred to

I. L. R. 44 Calc. 723

JUTE.

——— *Fariahs—Trade usage at Chandpur—Passing of property on sale—Custody with purchaser merely as security, for advances—Insurance of that interest, benefit of—Contract Act (IX of 1872) s 51* When nothing remains to be done to the goods by the seller for the purpose of ascertaining the price, then *prima facie* the pro-

JUTE—*concld.*

perty in them passes although they have not been weighed by the buyer. *Simmons* v. *Swift, 5 B. & C. 857, Turley* v. *Bates, 2 H. & C. 200, Shoshi Mohun Pal Chowdhry,* v. *Nabo Krishto Poddar, I. L. R. 4 Calc. 801, Martineau* v. *Kitching, L. R. 7 Q. B. 436,* referred to. It would be otherwise in England if the parties intended that property in the goods should not pass until the goods had been weighed. The Indian Law is the same and the provisions of s. 81 of the Contract Act do not exclude the question of intention which is laid down in the English cases as the determining factor. Where according to the usage of trade at Chandpur the sale of jute by *fariahs* is not complete until the goods are examined, selected and weighed by the company (purchaser) although stored in the godowns of the company by whom advances have been made to the *fariahs* against these goods :—*Held,* that the contract in the present case being *in the first instance a contract for the sale of unascertained* goods, what remained to be done by the buyer to the goods appropriated to the contract by the seller was not merely for the purpose of ascertaining the price but was also for the purpose of placing the buyers in a position to say whether and to what extent they would for their part accept the goods offered to them. That the position seemed to be that the buyer had a right to the custody of the jute as security for his advances, and that in addition while the seller had no right to sell to others, the buyer was under a corresponding obligation to buy as much of the jute as was of the requisite standard. That (though the company had insured this jute as their own) the insurance appeared to have been intended for the protection of their own interest in the jute, not for the protection of the seller's interest which they were not bound to insure. That the defendants, therefore, were entitled to apply the whole amount which they received under the policies of insurance to indemnify themselves against the loss which they themselves had actually sustained and were not bound to apply any portion of it to the benefit of the plaintiff. That there was no usage that the loss is borne entirely by the company in cases where the jute is not insured to the full extent. ABDUL AZIZ BEPARI *v.* JOGENDRA KRISHNA ROY (1916) . **I. L. R. 44 Calc. 98**

K

KANGANAM.

———— **levy of, legality of—**

See ESTATES LAND ACT (MADRAS ACT I OF 1908, SS. 4, 27, 73 AND 143.
I. L. R. 40 Mad. 640

KANUNGO.

See CONTRACT ACT (IX OF 1872), s. 23
I. L. R. 39 All. 51, 58

KHAIRAT.

See BEQUEST **I. L. R. 41 Bom. 181**

KHAMAR LAND.

See NON-OCCUPANCY RAIYAT.
I. L. R. 44 Calc. 267

KHANA-DAMAD.

See CUSTOM **I. L. R. 44 Calc. 749**

KHATEDAR.

See LAND REVENUE CODE (BOM. V OF 1879), s. 74 **I. L. R. 41 Bom. 170**

KNOWLEDGE.

———— **evidence of—**

See HINDU LAW—ALIENATION.
I. L. R. 44 Calc. 186

L

LAND ACQUISITION.

See LAND ACQUISITION ACT (I OF 1894).

———— *Recoupment—Compulsory acquisition—Calcutta Improvement Act (Bengal V of 1911), ss. 39, 40, 41(a), 41(b), 42(a), 49(2), 68, 69, 78, 81, 122(c), 122(d)—"Street"—"Affected"—Jurisdiction of the Civil Court—Publication of a notification under s. 49(2)—Its effect—Interpretation of Statutes—Legislature, object of, must be determined as expressed in the provisions of the Statute.* The acquisition of land for the purpose of recoupment is not specified as one of the objects of the Calcutta Improvement Act and by no stretch of language can it be maintained that recoupment is one of the purposes of the Act. The trustees have not been empowered to acquire land compulsorily for the purpose of recoupment and ss. 41, 42, 78, 81, 122 or 123 of the Act do not confer any such power on them. Ss. 41 and 42 deal merely with matters which must be or may be provided for when an improvement scheme is framed; they do not directly or indirectly authorise the compulsory acquisition of any land. Cl. (*a*) of s. 41 refers to the acquisition of land required for the execution of the scheme; while s. 78 authorises the abandonment of land not required for the execution of the scheme. Ss. 78 and 81 have no connection with compulsory acquisition of land. Ss. 122 and 123 only regulate the mode in which the accounts are to be kept and do not sanction compulsory acquisition of land. S. 69 is the only section in the whole Act which deals with compulsory acquisition of land and the Board, under that section, is not competent to acquire land compulsorily for recoupment. There is no foundation for the contention that the Legislature has resorted to an indirect method to deprive private owners of their property by provisions in the Act which effectually confer on the Board a disguised authority to acquire land compulsorily for purposes of recoupment. S. 78 was not intended to be used as a cover for the arbitrary acquisition of private property for purposes of recoupment—such recoupment to be made either by way of levy of a lump sum from the owner or a periodical tax payable out of the property or by way of acquisition of the land for profitable resale hereafter. Neither s. 78 nor s. 81 necessarily implies a power of acquisition for recoupment. The intention to impose a charge on the subject must be shown by clear and unambiguous language. By the provisions of the fifth chapter only three taxes are imposed and it would be against well-known rules of construction of statutes to hold that another tax was, by implication, imposed upon the subject. In all instances where unlimited

LAND ACQUISITION—*contd.*

powers of interference are intended to be con ferred on the executive authorities, the Statute puts the matter plainly and beyond dispute *Stockton Railway Co* v *Barrett, 11 Cl & Fin 590, 65 R R 261, Ezra* v *Secretary of State for India, I L R 32 Calc 605*, referred to It is plain that "providing building site" under s 39(*a*) does not mean buying up land already fit for building site or pulling down houses and selling the land for building site, it means, making it possible to use as building site land which cannot for various reasons be now used as build ing site S 2(*n*) shows that the expression "public street" has the same meaning as in s 3(37) of the Calcutta Municipal Act According to that de finition the term 'street" does not include either the abutting lands on both sides or the houses thereon S 41(*b*) only contemplates that the scheme shall provide for the lay out or relay out of such land in the area comprised in the scheme as may be validly acquired by or become other w se vested in the Board The section does not imply an obligation on the Board and corres ponding authority on their part to acquire com pulsorily all the lands situated in the area com prised in the scheme S 49(2) does not deprive the Civil Court of jurisdiction to determine whe ther the action of the Board is or is not *ultra vires.* It merely provides that after the publica tion of sanction the scheme cannot be impeached on the ground that it has not been framed and sanctioned duly, that is, in conformity with the procedure prescribed by the Act, but there is nothing in the section which takes away the jurisdiction of the Civil Court to investigate whether the action taken by the Trustees has [illegible]

pletely barred suits of all description in the Civil [illegible]

more than is *bonâ fide* necessary for the purpose The object of the Legislature must be determined as expressed in the provisions of the Statute, it is not permissible to speculate about the ex pressed intentions of the Legislature, nor are we concerned with the difficulties, real or imaginary, which may arise from the adoption of the ex pressed intentions of the Legislature *Donaldson* v *Mayor of South Shields Corporation, 72 L T 685 68 L J Ch 102*, referred to A section which bars a suit for an act done does not pro hibit a suit for an injunction to restrain the com mission of an act not done but threatened to be done *Ganoda Sundary* v *Nalini Ranjan Raha, I L R 36 Calc 28*, referred to Land may well be said to be "affected" by the execution of a scheme within the meaning of s 42(*a*) when, by the construction of the improvement works, there is a physical interference with any right, public or private, which the owner is entitled to exercise in connection with that property *Metropolitan Board of Works* v *McCarthy, L R 7 H L 243*, [illegible] *L. R 7 H L* [illegible] *9 738, Western* [illegible] *Annapolis Ry* [illegible] *Public Works*

LAND ACQUISITION—*concld*

v *Logan*, [*1903*] *A C 355, Ex parte Jones, L R 10 Ch App 663 Randall* v *Blair, 45 Ch D 139, Duke of Devonshire* v *O'Connor, 24 Q B D. 468, Galloway* v *Mayor of London, L R 1 H L 34, Hendon Local Board* v *Pounce, 42 ChD 602, Lynch* [illegible] *32 Ch D* [illegible] *27 Ch D* [illegible] *politan Boa*[illegible] *Commissioners of Sewers of the City of London, 28 Ch D 486, Denman & Co* v *Westminster Corporation,* [*1906*] *1 Ch 464, Kreglinger* v *N. Patagonia Meat Co*, [*1914*] *A C 25*, and *Fernley* v *Lime House Board of Works, 68 L J Ch 344, Wells* v *London, Tilbury Railway Co, 5 Ch D 126*, referred to TRUSTEES FOR THE IMPROVE-MENT OF CALCUTTA *v* CHANDRA KANTA GHOSH, (1916) **I. L. R 44 Calc. 219**

LAND ACQUISITION ACT (I OF 1894).

See RAILWAYS ACT (IX OF 1890 AS AMENDED BY ACT IX OF 1896), s 7 **I. L. R. 41 Bom. 291**

———— **s. 9**—*Procedure—Occupier of land sought to be compulsorily acquired—Notice* Under s 9, cl. (3) of the Land Acquisition Act, 1894, the occupier of land, concerning which a public notice has been given under cl (*1*) of the section, is entitled to such notice as will give him, in the same manner as the persons mentioned in cl (*2*) fifteen days, interval in which to state before the Collector the nature of his interest in the land and the particulars of his claim for compensation, etc KRISHNA SAH *v* THE COLLECTOR OF BAREILLY (1917) **I. L R. 39 All. 534**

LAND ENCROACHMENT ACT (MAD. III OF 1905).

See IRRIGATION CESS ACT (MAD VII OF 1865), s 1, PROVISOS 1 AND 2. **I. L. R. 40 Mad. 886**

LANDHOLDER.

———— **engagement by, with Government—**

See IRRIGATION CESS ACT (MAD ACT VII OF 1865), s 1 AND PROVISOS 1 AND 2 **I L. R. 40 Mad 886**

LAND LAW IN BENGAL.

See MINERALS **L. R. 44 I. A. 246**

LANDLORD AND TENANT.

See EVIDENCE ACT (I OF 1872), s 116 **I. L. R. 40 Mad. 561**

1 EJECTMENT.

1. ———— *Suit for ejectment —Notice to quit—Tenancy reserving an annual rent —What notice a tenant holding an annual tenancy* [illegible]

LANDLORD AND TENANT—*contd.*

1. EJECTMENT—*contd.*

death of Chandu. his heirs, including the defendant. continued to live on the land and. subsequently, the defendant's name was substituted in the landlord's *sherista* as tenant in respect of 2½ cottahs of land at an annual rental of Rs. 15. Thereafter. the landlord executed a registered *pottа* and let out one bigha of his lands. including the defendant's portion. for a period of 39 years. to one Sheikh Fasiulla. who accepted the defendant as tenant of a portion of it. Fasiulla then transferred his interest to one Mamso. who. subsequently. sold the same to the plaintiff. On the defendant's failure to pay rent for the 2½ cottahs of land. the plaintiff on the 10th Kartick. 1318. corresponding with the 27th October. 1911. served the defendant with a notice to vacate the land within the 30th Kartick, 1318. corresponding with the 16th November. 1911. The defendant failed to comply with this notice. The plaintiff. thereupon. brought a suit for ejectment and *khas* possession and for arrears of rent. *Held*, that the rent being an annual rent and there being nothing to rebut the presumption in such a case that the tenancy was of a character corresponding thereto. the presumption ought to be drawn that the tenancy was to be an annual tenancy. *Durga Nikarini* v. *Gobardhan Bose*. *20 C. L. J. 448*. referred to. *Held*. also. that inasmuch as there was a contract of tenancy between the plaintiff and the defendant. but there was no registered instrument as required by s. 107 of the Transfer of Property Act. this case came within s. 106 of that Act. *Held*. further. that inasmuch as this was a lease of immovable property and not for agricultural or manufacturing purposes. but for some other purpose. it must be deemed to be a lease from month to month terminable on the part of either lessor or lessee. by 15 days' notice expiring with the end of a month of the tenancy. SHEIKH AKLOO *v.* SHEIKH EMAMAN (1916)

I. L. R. 44 Calc. 403

2. ———————— "*Taluka*" *patta*. *if imports permanency—Covenant by tenant to relinquish land on grantor personally requiring it. if runs with the land—Grant to be construed against grantor—Rule explained—Land encroached upon by tenant and treated by landlord as part of permanent tenancy—Tenant. if may be ejected therefrom*. If there be nothing either in the surrounding circumstances. or in the instrument which creates the interest. to show that it was intended to be otherwise. the inference is that a tenancy called "*taluka*" constitutes a permanent tenure. Where in a contract of tenancy *primâ facie* purporting to be a permanent tenancy. there was a covenant that "if the grantor had a personal necessity, the grantee would relinquish the land:" *Held*. that the covenant was in favour of the grantor personally and was not enforceable after his death by his heir. Scope of the rule that a covenant is to be construed most strongly against the grantor and most beneficially in favour of the grantee explained. The tenant aforesaid having encroached upon land belonging to the landlord. the landlord did not within the statutory period from the date of encroachment institute a suit to eject the tenant on the ground that he could not, without his consent. acquire the status of a tenant on the land encroached upon. but on the other hand treated it as part of the permanent tenancy: *Held*. in a suit for ejectment. by the heir of the grantor. that the land originally leased as well as the encroached land stood on the same footing and the tenant could not be ejected from either of them. SARODA KENTA LAHA *v.* ABDUL BANDEU BISWAS (1917) .

21 C. W. N. 903

2. EVICTION.

———————— *Eviction of tenant, effect of—Suspension of rent*. The eviction of the tenant whether from part of the demised premises or from the whole entails a suspension of the entire rent while the eviction lasts, whether the tenant remains in possession of the residue or not: the tenancy, however. is not thereby terminated. nor is the tenant discharged from the performance of his covenants other than payment of the rent. such as a covenant to repair. It is not necessary for the application of the rule. to find from how much land the tenant has been dispossessed. if it is found that he has been dispossessed from some land. To constitute an eviction. it is not necessary that there should be an actual physical expulsion by force or violence from any part of the premises. Any act of a permanent character done by the landlord or his agent with the intention of depriving the tenant of the enjoyment of the demised premises or any part thereof operates as an eviction. Therefore. whether the tenant is expelled by violence. or is obliged from the exigencies of the situation to submit quietly to the high-handed act of the powerful landlord. the result in either case is suspension of rent. DWARENDRO NATH RAY *v.* ASHABUDDI SARDAR (1916)

21 C. W. N. 492

3. LEASE.

———————— *Permanent lease of agricultural land—Covenant against alienation. voluntary or not or involuntary. with proviso for re-entry. if enforcible—Purchaser. if must be notified by lessor of intention to determine lease. before suit—Bengal Tenancy Act (VIII of 1885). s. 155. Sch. III. cl. (1). if applies—Limitation—Mortgage by lessee. sale in execution. purchase by mortgagee—Mortgagee if trespasser*. A permanent lease of agricultural land contained a covenant against sale. gift. mortgage. etc.. by the lessees with a proviso for re-entry in case the land was transferred or sold by auction. The lessees having mortgaged the land. the mortgagee sued on his mortgage and in execution of the decree obtained therein had the holding sold and purchased it himself and got possession through Court on 23rd November 1898. The original lessees continued in possession of a portion of the land under a sub-lease from the purchaser. Plaintiffs who proved their right to a 12 annas share in the interest of the landlord sued the purchaser and the original lessees for ejectment on 20th March 1915. The lower Courts having decreed the suit. the purchaser only preferred this second appeal: *Held*, that the plaintiffs were entitled to recover (joint) possession to the extent of their 12 annas interest. the defendant being a trespasser and the suit which was governed by Art. 142 of Sch. I of the Limitation Act having been instituted within time. *Per* SANDERSON. C. J.—The assignment was not *ab initio*. as the execution sale was

LANDLORD AND TENANT—*concld*

3 LEASE—*concld*

directly due to the voluntary act of the lessees *Per* MOOKERJEE, *J* —A covenant for re entry by the landlord upon an involuntary sale is valid in India as in England *Per* CURIAM —That in the absence of any act of the Plaintiffs recognising the purchaser as a tenant, he was in the position of a trespasser and neither s 155 nor cl (*1*) to Sch III of the Bengal Tenancy Act applied to the case *Per* MOOKERJEE, *J* —Where a covenant against alienation is coupled with a proviso for re entry, the landlord is not limited to the reliefs by injunction or damages. That as the tenancy was of agricultural lands, s 111, Transfer of Property Act, did not apply, and the suit was not bad because the plaintiffs did not previously notify their election to enforce the proviso The institution of the suit itself was a sufficient manifestation of the option to treat the lease as determined DWARKA NATH ROY CHOWDHURY *v* *MATHURA NATH ROY CHOWDHURY (1916)*

21 C. W. N. 117

4 RENT

———— *Rent, suit for, calculated on area under cultivation, on the basis of kabuliyat, by one co sharer only, making the other co sharer a defendant, if maintainable —Bengal Tenancy Act (VIII of 1885), ss 52, 188* The plaintiffs as fractional owners sued to recover rent on a *kabuliyat* making their co sharer who refused to join them a *pro formâ* defendant The land was at the time of letting waste and jungly and was not measured but a certain area, was stated by guess and it was provided that the tenants would pay rent at a fixed rate per bigha when the lands would be reclaimed or the surrounding lands brought under cultivation *Held*, that although as a general rule, all co contractees ought to be joined as plaintiffs, a suit by one would not be bad if the others were joined as defendants and if there was good reason for not joining them as plaintiffs, and one of several joint contractees may sue to enforce his share of the obligation if the other co contractees are joined as defendants That the present suit was not one for [illegible]

(1916) [illegible]

LAND REVENUE CODE (BOM. V OF 1879).

———— *s. 74—Rajinama and Kabulayat—Legal effect of Rajinama—Occupancy not subject to any equitable interest in the third party—Sale—Transfer of Property Act (IV of 1882), ss 2 and 54—Registration Act (XVI of 1908), ss 17 and 90* One *C* as a registered khatedar of certain unalienated lands executed a Rajinama on August 11th, 1904, relinquishing the khata of the lands in favour of *D* *D* on the same day executed a kabulayat to the Mamlatdar undertaking to pay land revenue in respect of that khata *C* had not created any valid equitable interest in any third party by way of mortgage or otherwise In 1911, he sold the lands to the plaintiffs by a *registered* sale deed and the plaintiffs filed a suit for the purpose of obtaining possession from *D* *The Subordinate Judge held that in the absence* of a registered sale deed as required by s 54 of the Transfer of Property Act, 1882, the Rajinama could not by itself operate to transfer ownership in the property to *D* The lower appellate Court found that by passing the Rajinama *C* intended to abandon all his interest in favour of *D* and dismissed the plaintiffs' suit On appeal to the High Court *Held*, confirming the decree, that the legal effect of the Rajinama was the extinguishment of the interest of *C* in the property and therefore the plaintiffs got nothing by their sale deed MOTIBHAI JIJIBHAI *v* DESAIBHAI GOKALBHAI (1916) **I. L. R. 41 Bom. 170**

LAND REVENUE CODE (BOM. V OF 1879)—*concld*

———— **s. 74**—*concld*

LEASE.

See LANDLORD AND TENANT—LEASE.

See LEASEHOLD PROPERTY

See MOKARARI LEASE

See MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS ACT (MADRAS I OF 1900), s 19

I. L R. 40 Mad. 603

See REGISTRATION ACT (XVI OF 1908), s 17, SUB S 1 (*d*)

I. L. R. 41 Bom. 458

———— **of mutt properties**—

See HINDU LAW—ENDOWMENT

I L. R. 40 Mad. 709

———— **registration of**—

See TENANCY AT WILL.

I. L. R. 44 Calc. 214

———— *Lease of Government land in writing, registered—Possession of part not given from inception of lease—Suit for damages—* [illegible]

March, 1896 from the defendant, the Collector of Godavari district, acting as Agent to the Government, a lease, in writing registered, for five years, of a piece of land whose 'probable extent' was described as 777 acres The plaintiff was given possession of only 668 acres and unsuccessfully demanded possession of the rest in July, 1896 After some correspondence the Tahsildar in 1895 communicated to the plaintiff the Collector's order that, 'pending the disposal of the dispute [illegible]

(*a*) that the cause of action for breach of the covenant to give possession occurred at the inception of the lease, *i e*, in March, 1896 and that as more than six years had elapsed from that date, the suit was barred under Art 116 of the Limitation Act, and (*b*) that breach of a covenant to give possession is not a continuing breach and such a covenant is not part of a covenant for quiet enjoyment which is a 'continuing covenant' *Held*, further, that the Tahsildar's communication, which was as consistent with a temporary suspen

LEASE—*concld.*

sion or an *ex gratia* remission of a claim for rent as with an acknowledgment of liability, was not such an unequivocal acknowledgment as is required by s. 19 of the Limitation Act. *Held,* also, that though the Transfer of Property Act is not applicable to Crown grants, like the one in question, the principle of its provision as to leases, *e.g.*, s. 108, etc., is applicable to them. *Quære:* Whether the Tahsildar or Collector had authority to acknowledge. *Per* SRINIVASA AYYANGAR, *J.*—The plaintiff was barred even if limitation be reckoned from July, 1896 when he demanded and failed to obtain possession from the Government. SECRETARY OF STATE FOR INDIA *v.* VENKAYAYYA (1915). **I. L. R. 40 Mad. 910**

LEASEHOLD PROPERTY.

See MORTGAGE . **I. L. R. 44 Calc. 448**

LEAVE OF COURT.

See MOSQUE PROPERTY, SUIT FOR.
I. L. R. 44 Calc. 258

LEAVE TO SUE.

See WAIVER . **I. L. R. 44 Calc. 10**

LEAVE TO WITHDRAW.

See JURISDICTION.
I. L. R. 44 Calc. 367

LEGAL NECESSITY.

See HINDU LAW—ALIENATION.
I. L. R. 39 All. 500

———— **proof of**—

See HINDU LAW—ALIENATION.
I. L. R. 44 Calc. 186

LEGAL PRACTITIONER.

———— *Impropriety of counsel who appeared for one party appearing in subsequent proceedings for the other—Professional honour.* It is improper on the part of a legal practitioner who has acted for one party in a dispute to act for the other party in subsequent litigation between them relating to or arising out of that dispute. It is a matter which concerns the honour of the profession. HIRA DEVI *v.* DIGBIJAI SINGH (1917) . . . **21 C. W. N. 1137**

LEGAL PRACTITIONERS ACT (I OF 1846).

———— **ss. 4, 12**—

See PLEADER . **I. L. R. 44 Calc. 290**

LEGAL PRACTITIONERS ACT (XX OF 1853).

See PLEADER . **I. L. R. 44 Calc. 290**

LEGAL PRACTITIONERS ACT (XVIII OF 1879).

———— **s. 6**—

See PLEADER . **I. L. R. 44 Calc. 290**

———— **ss. 13, 14**—

See PROFESSIONAL MISCONDUCT.
I. L. R. 44 Calc. 639

———— **ss. 13 (b) (f), 14**—*Mukhtear acting as go-between for bribing police if punishable under cl. (f)—Enquiry commenced under cl. (b) but ultimately disclosing act coming within cl. (f), if irregular—S. 13, cl. (f), enquiry under, if can be made by subordinate Court.* Where a mukhtear was found to have received a sum of money from a person

LEGAL PRACTITIONERS ACT (XVIII OF 1879)—*concld.*

———— **ss. 13, 14**—*concld.*

against whom some police cases were pending for the purpose of bribing the police and acted as a go-between: *Held,* that his action furnished reasonable cause for punishment under s. 13. cl. (*f*) of the Legal Practitioners' Act. A subordinate Court can take proceedings under s. 13, cl. (*f*) of the Legal Practitioners' Act, and even if the High Court be the only Court which can order such an enquiry, it is open to the High Court to avail itself of the inquiry already made by a subordinate Court and proceed to deal with *the case itself. An enquiry by the lower Court* is not irregular on the ground that the act disclosed as the result of the enquiry is found to come under s. 13, cl. (*f*), and not under s. 13, cl. (*b*). *Re* HARI PRASANNA MUKHERJEE (1917)
21 C. W. N. 516

LEGATEE.

See ESTOPPEL . **I. L. R. 44 Calc. 145**

LEGISLATURE.

———— **object of**—

See LAND ACQUISITION.
I. L. R. 44 Calc. 219

LEGITIMACY.

See MAHOMEDAN LAW—MARRIAGE.
I. L. R. 41 Bom. 485

LESSOR AND LESSEE.

See TRANSFER OF PROPERTY ACT (IX OF 1882), s. 1081 (*j*).
I. L. R. 40 Mad. 1111

LETTERS PATENT, 1865.

———— **cls. 12**—

See WAIVER . **I. L. R. 44 Calc. 10**

———— **cls. 12 and 18**—

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), ss. 7, 36, 90.
I. L. R. 40 Mad. 810

———— **cl. 15**—

See APPEAL, RIGHT OF.
I. L. R. 44 Calc. 804

See REVIEW . **I. L. R. 40 Mad. 651**

1. ———— *"Judgment" within the meaning of—An order of a single Judge, rejecting an application for review, if a judgment—Whether an appeal lies from such an order—Cl. 15 of the Letters Patent, whether contemplates appeals from such orders where the judgment of which review was sought was passed by two Judges.* An appeal was disposed of by a Division Bench consisting of two Judges, and an application for review of the judgment passed in the appeal was presented to one of the two Judges when the other judge had ceased to be a Judge of the Court. The application was rejected by the aforesaid Judge sitting alone and against the said order rejecting the application for review, a Letters Patent appeal was filed: *Held,* that it was not an appeal against the judgment of a single Judge within the meaning of s. 15 of the Letters Patent, because it was virtually directed against the judgment of two Judges, of which review was sought by the application. The intention of the Legislature was not

LETTERS PATENT, 1865—*concld*

to allow appeals from such orders KAILAS CH SAMADDAR *v* REBATI MOHUN ROY (1917)
21 C. W. N. 652

2. ——————— *Order of remand by single Judge, setting aside decree in plaintiffs' favour for further investigation of facts, if judgment* Plaintiff having sued the defendants for accounts in respect of two wine shops, first on the footing of his being a servant and in the alternative as partner, the first Court gave him a decree for dissolution and accounts on the finding that the defendant was partner On appeal, the ... ded ... be ... first ... ree for accounts against defendant as agent of one of the shops On second appeal, a single Judge ... between the parties could be determined ... that the effect of the decision of the single Judge being to deprive plaintiff of the benefit of the decree made in his favour by the District Judge and to reopen the entire controversy between the parties, it was a judgment within the meaning of s 15 of the Letters Patent and a further appeal lay under that section The expression "some right or liability" in the definition of "judgment' by Sir Richard Couch in *The Justices of the Peace* v *The Oriental Gas Co, 8 B L R 433,* (according to whom the judgment may be either final, preliminary or interlocutory) is not restricted to the right in controversy in the suit itself BEHARI LAL SAHA *v* JNANENDRO NATH BHATTACHARYA (1917) **21 C. W. N. 921**

——————— **cls. 25, 26**—

See JURY, TRIAL BY
I. L. R. 44 Calc. 723

——————— **cl. 26**—

See COUNTERFEIT COIN
I. L. R. 44 Calc. 477

LETTERS PATENT (N. W. P.).

——————— **cl. 10**—

See CIVIL PROCEDURE CODE (1908), s 104, O XLIII, R 1 O XXI, R 90 **I L R. 39 All. 191**

See CRIMINAL PROCEDURE CODE s 195
I. L. R. 39 All. 147

See PROFESSIONAL MISCONDUCT
I. L R. 40 Mad. 69

LIBEL

——————— *Resolution of panchayat of Hindu caste community affecting member of community adversely—Question of sea voyages by* ... *from caste—Publication* ... s of ... of ... ight ... both ... shya ... dhri ... n of ... the ... une, 1910, by the panchayat ... "It was settled by the *panches* that since B. Gobind

LIBEL—*concld*

Das B Bhagwan Das publicly circulated among the *biradris* and the non *biradris* a pamphlet about the *biradri* against the practices of the *biradri* and did not attend the *panchayat* on being called to do so, these facts show that these gentlemen circulated the pamphlet simply to disgrace the *biradri*, and their not signing the *chitta*, shows that their views are against the *panchayat*, therefore it is ordered that until B Govind Das and B Bhagwan Das clear themselves, the family of B Madho Das be *bartao band* " This resolution was admittedly communicated by the respondent in his capacity of chaudhri to the chaudhri of another section of the community and to others of the caste people generally, by which action, it was alleged that the appellant and his brother were put in the position of being virtually declared to be outcastes. The defence was that the publication was part of the duty of the respondent as chaudhri and was therefore privileged *Held* by the Judicial Committee that the *onus* of establishing the fact that the respondent s conduct was the outcome of some improper motive *or private spite, was on the appellant* and he had not discharged it The respondent had acted in good faith in the execution of his duty and in the absence of express malice the communication of the resolution of the *panchayat* was privileged The members of the appellant s family had notice of the meeting at which it was passed, ... he pan ... uld not ... solution ... *R 181,* ... *rade* v ... *Ward,* ... ing the accepted rule as to privilege To defeat or rebut ...
I. L. R. 39 All. 561

LICENSE.

See CONTRACT WITH ALIEN ENEMY
I L R 41 Bom. 390

See EASEMENTS ACT (V OF 1881) s 60
I. L. R. 39 All. 621

——————— **for sale of drugs**—

See UNITED PROVINCES EXCISE ACT, 1910, s 40 **I. L. R. 39 All. 107**

LIMITATION.

See ADVERSE POSSESSION
I. L R. 44 Calc. 425

See BOMBAY DISTRICT POLICE ACT (BOM IV OF 1890), ss 63 (b), 80 (3)
I. L. R. 41 Bom. 737

See CIVIL PROCEDURE CODE (ACT V OF 1908 s 92 **I. L. R 40 Mad. 212**

See CIVIL PROCEDURE CODE (1908), O XXII, R 4
I. L R. 39 All. 551

See CIVIL PROCEDURE CODE, O XXXIV R 5 . . **I. L. R. 39 All. 64**

LIMITATION—*contd.*

See Execution of Decree. **I. L. R. 39 All. 193**

See Limitation Act (IX of 1908), Sch. I, Art. 85 . **I. L. R. 39 All. 33**

See Limitation Act (IX of 1908), Sch. I, Art. 109. **I. L. R. 39 All. 200**

See Principal and Surety. **I. L. R. 44 Calc. 978**

See Registration Act (III of 1877), ss. 72 (*1*), 76 and 77. **I. L. R. 40 Mad. 759**

See Sale for Arrears of Revenue. **I. L. R. 44 Calc. 412**

1. ——————— *Appeal—Sufficient cause for admitting when time barred—Judicial Discretion—Abortive application for review—Settled Rule of Procedure—Abatement of suit—Ex parte order—Substitution of Party on Interlocutory Appeal —Limitation Act (IX of 1908), s. 5—Civil Procedure Code (XIV of 1882), ss. 366, 368, 371.* The judicial discretion given by s. 5 of the Indian Limitation Act, 1908, to admit an appeal after the prescribed period of limitation should be exercised if the appeal has been prosecuted with due diligence; the time occupied by an application in good faith for review, although made upon a mistaken view of the law, should be deemed as added to the period allowed for presenting the appeal. The above rule being one of procedure laid down by full Bench decisions in India, and acted on for many years, their Lordships will not interfere with it. When in the exercise of a judicial discretion a judge fails to apply a rule laid down for its exercise, the Appellate Court should either remit the case, or itself exercise the discretion. The remedy by revision given by s. 371 of the Code of Civil Procedure, 1882, when a suit has been ordered to abate, applies whether the abatement has been ordered under s. 366, consequent upon the death of the plaintiff, or under s. 368, consequent upon the death of the defendant. An order for abatement should not be made *ex parte* and without notice to the plaintiff. The substitution of a new plaintff or defendant for one stage of a suit, for instance upon an appeal as to an interlocutory order, is effective for all future stages of the suit. Brij Indar Singh *v.* Kanshi Ram (1917) } **L. R. 44 I. A. 218**

2. ——————— *Limitation Act (XV of 1877), Sch. II, Arts. 110 and 116—Suit for royalties due under a registered lease of land with the right to dig coal—Point not allowed to be taken which was not raised in the lower Courts nor in grounds of appeal to High Court or Privy Council—Form of decree where a party has refused to join as a plaintiff and has been made a defendant—Power to alter decree without an appeal.* To a suit for royalties due under a registered lease of certain land with the right to dig coal, Art. 116 of Sch. II of the Limitation Act, 1877, "for compensation for breach of a contract in writing registered" and providing a six years' period of limitation, and not Art. 110 for "a suit for arrears of rent," and giving only three years, was held to be applicable. There is a long established distinction in the Limitation Acts in favour of registered instruments and a long course of decisions in the Indian Courts in support of this interpretation of the Acts. *Ram Narain* v. *Kamta Singh, I. L. R. 26 All. 138,* dissented from. A point that as the royalty for one kist was in any case barred the amount of the decree should be reduced was held not to be open to the appellant to take, it not having been raised in either of the lower Courts, nor in the grounds of either the appeal to the High Court, or that to the Privy Council. One of the parties on refusing to join as a plaintiff was made the second defendant and included in his defence a claim for a decree against his co-defendant which the first Court gave him separately from the decree in favour of the plaintiffs. The High Court on appeal altered the form of the decree by giving a decree for the entire amount in favour of the plaintiffs, and declaring that for a named portion it was for their share, and as to the residue it was for the share of the second defendant. The second defendant did not appeal, but the principal defendant by his appeal brought the entire decree before the High Court, disputing it *in toto. Held,* that in the absence of any provision in the Civil Procedure Code or in any other enactment which showed clearly that the High Court had no power to make the decree it had passed, and the whole decree being before it, the High Court had jurisdiction to make the decree which should have been made by the first Court. Tricomdas Cooverji Bhoja *v.* Gopinath Jiu Thakur (1916) . **I. L. R. 44 Calc. 759**

3. ——————— *Limitation Act (XV of 1877), Sch. II, Arts. 142, 144—Suit to recover land diluviated and re-formed in situ—Dispossession—Adverse possession—Continuation of possession of land while diluviated—Definition s. 3 of Limitation Act—Continuous possession of successive owners when it cannot be combined.* The appellants sued to recover *khas* possession of a 10-anna share with mesne profits in portions of certain mauzas which after being diluviated had reformed *in situ.* The question was whether the land in suit belonged to the plaintiffs' mahal, or to the principal respondents' (defendants') mahal. The suit was brought on 6th September 1904. The Subordinate Judge found in favour of the plaintiffs' title and that the suit was not barred by limitation. It was common ground that the period of limitation applicable was twelve years, the main contest being as to whether Art. 142 of Sch. II of the Limitation Act, 1877, was applicable, or Art. 144 The High Court decided the case on limitation alone holding that the suit was barred by Art. 142. *Held* by the Judicial Committee (upholding the decision of the first Court both on title and limitation), that there had not been down to September 1892 any dispossession of the plaintiffs within the meaning of Art. 142. An owner of land does not discontinue his possession of it whilst it is diluviated. Constructively it continues until he is dispossessed, and upon the cessation of the dispossession before the statutory period of limitation has elapsed, constructively it survives. *Leigh* v. *Jack, L. R. 5 Exch. D. 264, per* Cotton, *L. J.,* followed. It seemed to follow that there can be no continuance of adverse possession when the land is not capable of use and enjoyment, so long as such adverse possession must rest on *de facto* use and occupation. *Secretary of Stat for India* v. *Krishnamoni Gupta, I. L. R. 29 Calc. 518; L. R. 29 I. A. 104,* approved. In the present case beyond temporary *utbandi* cultivation there was nothing down to 1892 to show an exclusion of the plaintiffs by the Revenue authorities.

LIMITATION—*concld.*

Whether the land cultivated was the same each year or not does not appear at any rate it was annually submerged, and there were no circumstances to link together various portions of ground so as to make the possession of a part, as it emerged, amount constructively to the possession of the whole *Mohini Mohan Roy* v *Promoda Nath Roy, I L R 24 Calc 256*, referred to No dispossession having occurred (except possibly within 12 years of the commencement of the suit) Art 144 and not Art 142 was the article applicable Whether or not in the circumstances of the case conduct which was insufficient to evidence dispossession can be used to evidence adverse possession available to the defendants, they failed on the ground that the period of time necessary to bring them under the protection of Art 144 could not be made out unless to the period during which they were in possession there was added, *out of the prior period* when it is contended the Revenue authorities had possession, a number of years going back to 1892 and that could not be done in this case for the reason shown in the definition s 3, that the defendants did not derive their liability to be sued "from or through" the Revenue authorities in any sense of the words They had in fact advanced a claim adverse to those authorities and had succeeded in it BASANTA KUMAR ROY *v* SECRETARY OF STATE FOR INDIA (1917)
I. L. R. 44 Calc. 858

4 ——— *Payments towards debt —Court, if it can find out whether it is for principal or interest—Limitation Act (IX of 1908), s 20* Where payments are made towards a debt, but there is nothing to show whether they had been made in respect of principal or interest, the Court is entitled to find out on the evidence for what purpose the payments were made HEM CHANDRA *BISWAS v PURNA CHANDRA MUKHERJI* (1916)
I. L R 44 Calc. 567

LIMITATION ACT (IX OF 1871).

——— Art 129 and s. 29—

See HINDU LAW—ADOPTION
I. L R. 40 Mad 846

LIMITATION ACT (XV OF 1877).

See HINDU LAW—ADOPTION
I. L. R. 40 Mad 846

——— s. 19—

See LEASE I. L. R. 40 Mad 910

——— s 22—*Assignment of original plaintiff's rights—Addition of assignee as plaintiff—S 22, inapplicable—Jungle or forest lands in zamindari—Presumption of ownership of kudivaram in the zamindar —Onus of proving contrary, on ryots* The presumption, as regards waste land, jungle or forest land in a zamindari, [illegible]

[illegible]

(XV of 1877) does not apply to a case where a plaintiff is added in the course of a suit, in conse[illegible] the original [illegible] ro the new [illegible] s own right [illegible] d to be in [illegible] rate a right for himself independently of the rights of the

LIMITATION ACT (XV OF 1877)—*concld*

——— s. 22—*contd*

original plaintiff ARUNACHELLA AMBALAM *v* ORR (1914) . . I L R 40 Mad. 722

——— Sch. II, Art. 89, s 8—

See ACCOUNTS, SUIT FOR
I. L R. 44 Calc 1

——— Sch II, Arts. 110, 116—

See LIMITATION I. L R. 44 Calc. 759

——— Sch II, Art 116—

See LEASE . I. L. R. 40 *Mad* 910

——— Sch. II, Arts 142, 144—

See LIMITATION I. L. R. 44 Calc. 858

LIMITATION ACT (IX OF 1908)

See HINDU LAW—ADOPTION
I. L. R. 40 Mad. 846

——— s 5—

See LIMITATION L. R. 44 I. A. 218

——— *Delay in filing appeal —Death of party pending judgment—Legal representatives not brought on record—Minority of one of the appellants—Negligence of the guardian—Excuse of delay—Sufficient cause, a question of discretion* S filed a suit against G in the Subordinate Judge's Court G died after the hearing of the suit, but before delivery of judgment. The judgment was pronounced on the 3rd July 1913 against G On the 2nd October 1913 G's widow R filed an appeal to the District Court on behalf of her two sons D and B, of whom B was major but D a minor The appeal was found to be beyond time by fifty days The question being raised whether there was a sufficient cause for excuse of delay in favour of the minor appel[illegible]

I. L. R. 41 Bom. 15

——— s. 6, Sch. I, Arts. 182, 183—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 144 I. L. R. 41 Bom. 625

[illegible] well for obtaining a copy of the decree as for obtaining a copy of the judgment, and if he has applied for copies of the judgment and decree at different times, both these periods should be excluded in computing the periods of limitation allowed for presenting the appeal, unless the two periods overlap partially or entirely in which case the appellant is not entitled to have a deduction of the same time twice over RAJANI KANTA KAPALI *v* KALI MOHAN DAS KAPALI (1916).
21 C. W. N. 217

——— s 15—An attachment before judgment is not an injunction or order within the meaning of s 15 of the Limitation Act MUNSUR ALI *v* ABHOYA CHARAN DAS (1917)
21 C. W. N. 1147

LIMITATION ACT (IX OF 1908)—*contd.*

——— s. 16—"*Proceeding,*" *meaning of, if includes suit to set aside sale—Period taken by defendant in litigation to set aside sale, exclusion of, in calculating period of limitation.* That the word "proceeding" in s. 16 of the Limitation Act is not restricted to an application for setting aside a sale but is comprehensive enough to include a suit as well as an application and the obvious intention of the Legislature was to allow an exclusion of the period during which the validity of the sale was in controversy whether the sale was impeached by a suit or by an application. PROMOTHA NATH ROY *v.* KISHORE LAL SHAHA (1916) . . **21 C. W. N. 304**

——— ss. 18, 20, 21; Sch. I, Arts. 65, 73, 115—

See PRINCIPAL AND SURETY.
I. L. R. 44 Calc. 978

——— s. 19—*Letter of acknowledgment, construction of—Conditional acknowledgment, operation of—Performance of condition, necessity for—Contract not to plead limitation, legality of—Contract Act (IX of 1872), s. 23—Estoppel against statute of limitation.* The plaintiff filed a suit on the 19th September 1912, to recover damages for breach of an oral contract by the defendant, of which performance was due in 1906, and relied on a letter, dated 20th September, 1909, written by the defendant to the plaintiff as saving the bar of limitation. The letter was to the effect that, if certain arbitrators should decide that the defendant should pay any amount, he would immediately pay, but, that if the arbitrators failed to decide, the plaintiff might sue and that the defendant would not plead limitation. The arbitration failed. The plaintiff sued as aforesaid on the 19th September 1912, but the defendant pleaded limitation in bar of the suit. *Held,* (i) that the letter amounted only to a conditional acknowledgment; (ii) that where there is a promise to pay on a condition, that condition in order that the promise may operate as an acknowledgment, must be fulfilled; *In re River Steamer Company, L. R. 6 Ch. App. 822, Maniram Seth* v. *Seth Rupchand, I. L. R. 33 Calc. 1047,* and *Arunachella Row* v. *Rangiah Appa Row, I. L. R. 29 Mad. 519,* referred to; (iii) that the plaintiff was not entitled to a deduction of time which elapsed between the date of the agreement to refer to arbitration and the date of the failure of the arbitration; (iv) that an agreement by a debtor not to raise the plea of limitation is void under s. 23 of the Contract Act, as it would defeat the provisions of the Limitation Act; and (v) that parties cannot estop themselves from pleading the provisions of the statute of limitation. *Sitharama* v. *Krishnasami, I. L. R. 38 Mad. 374,* referred to. RAMAMURTHY *v.* GOPAYYA (1916).
I. L. R. 40 Mad. 701

——— ss. 19 and 20—*Endorsement of part-payment recorded by creditor and signed by debtor —Endorsement, good as an acknowledgment of liability under s. 19.* A payment made by a mortgagor who was able to write, was recorded on the back of the mortgage bond by a servant of the creditor and signed by the debtor. The endorsement ran as follows:—"Rs. 378 paid towards this document, K. V. Subbarayudu." Nearly Rupees 1,500 were due on the date of payment. It did not appear whether the payment was made towards principal or towards interest: *Held,* that the endorsement amounted to an acknowledgment of liability within the meaning of s. 19 of the Limitation Act, though the payment was not good as a part-payment within the meaning of s. 20 of the Act. The scope of ss. 19 and 20 pointed out. *Joganadha Sahu* v. *Rama Sahu, 17 Mad. L. T. 80,* followed. VENKATAKRISHNIAH *v.* SUBBARAYUDU (1916).
I. L. R. 40 Mad. 698

——— s. 20—

See LIMITATION **I. L. R. 44 Calc. 567**

——— *Part-payment—Payment—recorded by endorsements in the handwriting of the person receiving—Endorsement only signed by the debtor, whether sufficient acknowledgment.* To save the suit from being barred by limitation, the plaintiff relied on part-payments made by the defendant. The part-payments were recorded by endorsements which the plaintiff admitted were in his handwriting, but he contended that the endorsement being signed by the defendant was a sufficient acknowledgment within s. 20 of the Limitation Act, 1908. *Held,* that the fact of payment recorded being not in the handwriting of the person making the payment the provisions of the section were not satisfied. *Santishwar Mahanta* v. *Lakhikanta Mahanta, I. L. R. 35 Calc. 813,* applied. NIWAJKHAN NATHANKHAN *v.* DADABHAI (1916).
I. L. R. 41 Bom. 166

——— s. 28; Sch. I, Arts. 124, 144—*Religious endowment—Adverse possession of sarbarakar—Suit by descendant of original dedicator to oust son of sarbarakar.* Where a person had been appointed in 1899 by a Revenue Court *sarbarakar* of certain endowed property and had remained in possession until 1914, when he died, it was held that a suit brought in 1915 by a descendant of the original dedicator to evict the son of the appointee of 1899 and to have herself declared *sarbarakar* of the endowed property was barred by limitation. *Gnanasambanda Pandara Sannadhi* v. *Velu Pandaram, I. L. R. 23 Mad. 271,* followed. RAM PIARI *v.* NAND LAL (1917) . . . **I. L. R. 39 All. 636**

——— Sch. I, Art. 11—

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), ss. 278, 282, 283, 287.
I. L. R. 41 Bom. 64

——— *Attachment and sale of moveables—Dismissal of claim petition—Suit for declaration and value of moveables, within one year of dismissal of claim petition but more than a year after attachment, governed by Art. 11 of the Limitation Act—Civil Procedure Code (Act V of 1908), O. XXI, r. 63, nature of suits brought under.* The plaintiff, whose moveable property was attached in execution of a decree against a third party, was unsuccessful in his claim petition and then filed the present suit more than one year after the date of the attachment but within one year of the date of the order dismissing his claim petition. In his plaint he prayed for a decree establishing his right to his moveables and directing the first defendant at whose instance the moveables were attached, to pay him the value thereof: *Held,* that the suit was within time, that it was a suit contemplated by O. XXI, r. 63, Civil

LIMITATION ACT (IX OF 1908)—*contd*

——— **Sch. I, Art. 11—*concld***

Procedure Code, and that it was governed by Art 11 of the Limitation Act *Held*, further, that the words "to establish the right which he claims to the property" which occur both in Art 11 and in O XXI, r 63, Civil Procedure Code, are wide enough to cover not only a suit for a declaration, but also one for relief consequential on such declaration Nature of suits under O XXI, r 63, considered *Kishori Mohun Roy* v *Hursook Dass, I L R 12 Calc 696*, and *Kunhiamma* v *Kunhunni, I L R 16 Mad 140*, followed *Phul Kumari* v *Ghanshayam Misra, I L R 35 Calc 202*, distinguished. BASIVI REDDI v RAMAYYA (1916)

I. L. R 40 Mad 733

——— **Sch. I, Arts. 29, 36**—*Execution of decree—Civil Procedure Code (1908), s 73—Money rateably distributed amongst decree holders, to which they were subsequently declared not to be entitled—Suit to recover money so distributed—Limitation* One *S* brought a suit for money against *N* and *B* and attached before judgment a quantity of grain in their possession Thereupon one *M*, from whom the grain had been purchased, objected to the attachment setting up a lien on the grain for unpaid purchase money The Court allowed *M*'s objection holding that *M* had a lien to the extent of Rs 2 000, whereupon *S* brought a suit for a declaration that *M* had no lien at all The property being of a perishable nature was sold by the Court and the proceeds were deposited in Court The suit of *S* against *M* was decreed by the Court of first instance on the 25th of June, 1912 Thereafter certain other decree holders of *N* and *B* applied for rateable distribution under s 73 of the Code of Civil Procedure, and the Court made the order asked for and paid the sale proceeds of the grain rateably to the decree holders and *S* on dates between the 19th and the 26th of September, 1912 But the declaratory decree obtained by *S* was reversed on appeal on the 24th of September, 1912, and the decree of the lower Appellate Court was affirmed in second appeal on the 30th of April, 1914 In June and [illegible] ...over by [illegible] various [illegible] ere not [illegible] Art 29 [illegible]

491, and *W[illegible]* v *[illegible]* referred to by WALSH, J—RAM NARAIN v BRIJ BANKE LAL (1917) **I. L. R. 39 All. 322**

——— **Sch. I, Arts. 30, 31, 115**—

See LOSS OF GOODS

I. L. R 44 Calc. 16

——— **Sch. I, Arts. 48 and 49**—*Suit for goods misappropriated—Contract Act (IX of 1872), ss 108 and 178* A commission agent employed to sell a jewel belonging to the plaintiff wrongfully pledged it in 1907 for Rs 175 to the defendant who lent the amount *bona fide* without any knowledge of the plaintiff's ownership Plaintiff coming to know of the wrongful pledge in 1909, sued in 1911 for the recovery of the jewel or its value *Held*, (i) that the suit was in time and

LIMITATION ACT (IX OF 1908)—*contd*

——— **Sch. I, Arts 48 and 49—*concld***

Art 48 and not Art 49 of the Limitation Act was applicable and time began to run from 1909 when the plaintiff came to know in whose possession the jewel was, and (ii) that as the defendant was a pawnee in good faith from one who had juridical possession of the jewel, the plaintiff was not entitled to recover the jewel without paying the defendant, the amount due to him on the pledge "Possession" in s 178 of Contract Act (IX of 1872) means juridical possession and not custody *Rameshar Chaubey* v *Mata Bhikh, I L R 5 All 341*, *Ram Lal* v *Ghulam Hussain, I L R 29 All 579*, and the observations of BACHELOR J, in *Nandlal Thakersey* v *The Bank of Bombay, 12 Bom L R 316, 335*, followed SESHAPPIER v SUBRAMANIA CHETTIAR (1916)

I L. R. 40 Mad. 678

——— **Sch I, Arts 62 and 120**—*Suit by one part owner of a jaghir against another who was also manager—Suit for account and recovery of income—Nature of suit—Suit in a District Munsif's Court for one year's income —Plaint returned for presentation to proper Court—Plaint, not represented—Subsequent suit in a District Court for income due for previous years—Civil Procedure Code (Act V of 1908), O II, r 2, suit, if, barred under* The plaintiff and the defendant were co sharers in a jaghir of which the latter was appointed by the Government as manager The former sued the latter in a District Munsif's Court for his share of the net income due for the year 1912, but the plaint was returned for presentation to the proper Court as the valuation of the suit exceeded the pecuniary limits of the jurisdiction of the said Court, the plaintiff did not represent the plaint in any Court but subsequently instituted the present suit in 1913 in the District Court for an account and recovery of his share of income due for the years 1905 to 1907 The defendant pleaded that the suit was barred by limitation and by O II, r 2 of the Civil Procedure Code *Held*, that the suit was one for an account which was governed by Art 120 and not Art 62 of the Limitation Act, and that the suit was not barred by limitation *Muhammad Habibullah Khan* v *Safdar Husain Khan, I L R 7 All 25*, followed *Held*, also, that the suit was not barred under O II, r 2 of the Civil Procedure Code SUBBA RAO v RAMA RAO (1916)

I. L. R. 40 Mad. 291

——— **Sch I, Arts. 64, 89, 115**—*Suit by* [illegible]

Art 89 has no application Where an account [illegible] a specific sum [illegible] princi[illegible] [illegible] forth [illegible] he post[illegible]tion is not altered even if the agent continues thereafter to hold his office as agent of that principal Either Art 64 or Art 115 applies to such a suit KESHO PROSAD SINGH v SARWAN LAL (1915) **21 C. W. N. 591**

——— **Sch. I, Art. 85**—*Limitation—"Mutual,* [illegible] *and* [illegible] *account, where there have* [illegible] *between the parties*

LIMITATION ACT (IX OF 1908)—*contd.*

———— **Sch. I, Art. 181**—*concld.*

step in aid of execution. PRANKRISHNA DAS *v.* PRATAP CHANDRA DALOI (1917).
21 C. W. N. 423

———— **Sch. I, Art. 182, cl. (5)**—

See EXECUTION **I. L. R. 40 Mad. 1069**

1. ———— *Step in aid of execution, what is—Decree-holder's application for summoning witnesses in opposition to objections taken by the judgment-debtor, if such a step.* After delivery of possession of certain property to the decree-holder, the judgment-debtor put in objections to the said delivery of possession, and the Court found it necessary to determine the standard of measurement, and, for that purpose, to take evidence in the matter. The decree-holder, on 11th February 1911, applied for summonses upon his witnesses, and witnesses were examined. The Court after taking evidence on both sides, directed fresh delivery of possession and ordered the decree-holder to deposit costs, which not having been paid, the execution case was dismissed on the 29th April 1911 for default. The decree-holder next put in the present application for execution on the 17th January 1914: *Held,* that as the determination of the standard of measurement became necessary by reason of the judgment-debtor's objection, the decree-holder's application to the Court for summoning witnesses was an act in furtherance of the application for execution which was still pending and was therefore a step in aid of execution. And the present application for execution having been made within three years of the date on which such a step was taken, was not barred. KEDER NATH DE ROY *v.* LAKHI KANTA DE (1917).
21 C. W. N. 868

2. ———— *Application for execution—Omission to file encumbrance certificate and draft sale-proclamation—Return for amendment—No representation—Application, whether, in accordance with law.* An application for execution presented in December, 1912 was ordered to be returned for amendment, the order requiring the applicant to file (*a*) encumbrance certificates and (*b*) draft proclamation of sale. It was never taken back by the applicant or amended. A fresh application was presented in January, 1915. On the objection that the application of December, 1912 was not in accordance with law and that the application of January, 1915 was therefore barred by limitation: *Held,* that the application of December, 1912 having complied with every statutory requirement, was one in accordance with law within Art. 182 (5) of the Limitation Act and that the application of January, 1915 was therefore in time, the failure to re-present the earlier application being of no consequence; as neither the failure to file an encumbrance certificate as required by r. 148 of the Rules of Practice nor the failure to file a draft proclamation of sale (which is not required by O. XXI, r. 66, Civil Procedure Code, to be annexed to the application) were such defects as would render an application otherwise legal, illegal. NATESA *v.* GANAPATHIA (1916).
I. L. R. 40 Mad. 949

———— **Sch. I, Art. 182 (7)**—*Execution of decree—Decree payable by instalments—Whole decree executable on failure to pay any one instalment—*

LIMITATION ACT (IX OF 1908)—*concld.*

———— **Sch. I, Art. 182(7)**—*concld.*

Limitation. When a decree payable by instalments provides that the decree-holder shall have "discretion" or "power" on default being made in payment of any one instalment to realize the full amount of the decree with interest without waiting for any future instalment to become due: *Held,* that this does not mean that the decree-holder is bound to execute the decree for the whole amount remaining due when default is made, but he may still continue to execute the decree by instalments as they become due. *Gaya Din* v. *Jhumman Lal, I. L. R. 37 All. 400,* and *Chatar Singh* v. *Amir Singh, I. L. R. 38 All. 204,* distinguished. *Shankar Prasad* v. *Jalpa Prasad, I. L. R. 16 All. 371,* referred to. LACHMI NARAIN *v.* SARJU PRASAD (1916) . **I. L. R. 39 All. 230**

———— **Sch. I, Art. 183**—*Decree of Original Side of High Court against two persons jointly—Revivor of decree on notice to one only under s. 248 of Civil Procedure Code (XIV of 1882), whether a revivor against the other also.* On the Original Side of the High Court an order of revivor under s. 248, Civil Procedure Code (XIV of 1882), of a decree against two persons jointly when made on an application for execution against only one of them does not keep the decree alive as against the other, so as to enable the decree-holder to execute it against that other judgment-debtor, more than twelve years from the date of the decree. Art. 183 of the Limitation Act (IX of 1908) which is applicable to execution of decree passed on the Original Side of the High Court differs in this respect from Art. 182. KRISHNAIYAH *v.* GAJENDRA NAIDU (1917).
I. L. R. 40 Mad. 1127

LIQUIDATOR.

———— **appointment of**—

See COMPANIES ACT (VII OF 1913), ss. 207 (ii), 208. **I. L. R. 39 All. 412**

LIS PENDENS.

———— *Mortgage suit, settlement of land by mortgagor with tenants pending suit and before suit—Tenants if acquire raiyati title—Mortgagor's power to grant leases binding on mortgagee.* Where, pending a mortgage suit, the mortgagor settled a number of persons on different portions of the land and the latter got their names entered in the record-of-rights as tenants in occupation: *Held,* in a suit by the plaintiff in the mortgage suit, who had purchased the mortgaged property in execution of his own decree, to recover possession from the tenants, that the plaintiff should recover. The principle of *Benad Lal Pakrashi* v. *Kalu Pramanick, I. L. R. 20 Calc. 708,* should not be extended so as to affect the application of the doctrine of *lis pendens.* But tenants who were settled on the land by the mortgagor before the mortgage suit but after the mortgage, could keep their lands against the plaintiff upon proof (the burden whereof would be upon them) that the leases in their favour were granted on the usual terms in the ordinary course of management. The mortgagor has not anything like a general authority to deal with or affect the mortgaged property during his possession thereof. The true position is that he may make a lease conformable to usage in the ordinary course of management. MADAN MOHAN SINGH *v.* RAJ KISHORI KUMARI (1912).
21 C. W. N. 88

LITIGATION.

——— protraction of—

See GRANT . I. L. R. 44 Calc 585

LOCAL INVESTIGATION.

——— *Proper mode of con*

proper thing for him to do is to be attended by a representative of either side for the purpose of identifying the points which are material in the case on the one side or the other, and he ought not to allow himself to enter into general conversation with the people of the neighbourhood about the case CHANDRA KUMAR GHOSE *v* MAHENDRA KUMAR GHOSE (1916)

I L R 44 Calc 711

LOSS OF GOODS.

See RAILWAYS ACT (IX OF 1890), s 72

21 C W. N. 1125

——— *Notice—"Railway administration"—Railways Act (IX of 1890), ss 3(6) 77, 140—Scope of s 140—Notice to Government through Collector—Limitation Act (IX of 1908), Sch I, Arts 30, 31, 115—Contract—Breach of contract, for non delivery* S 140 of the Railway Act has not the effect of cutting down the connotation of the words 'railway administration" as contained in s 3 (6) It only provides for the convenience of the party aggrieved that if he wants to serve the notice on the Manager of the State Railway or the Agent of the Railway Com

Secretary of State for India v *Dip Chand Poddar, I L R 24 Calc 306, Great Indian Peninsula Railway Co* v *Chandra Bai, I L R 28 All 552, Janaki Das* v *Bengal Nagpur Railway Co, 16 C W N 356, Perianna Chetti* v *South Indian Railway, I L R 22 Mad 137, Nadiar Chand Shaha* v. *Wood, I L R 35 Calc 194,* referred to *Per* CHATTERJEE, J Notice served upon the Government through the Collector within six months is sufficient to satisfy the requirements of s 77 of the Act Art 30 of the 1st Schedule to the Limitation Act does not apply where the plaintiff s case is not for the loss of the goods, and where the defendant does not plead or prove any loss. *Per* CHATTERJEE, J Art 31 applies to suits against a carrier for compensation for non delivery of or delay in delivering goods, and the time for suit is one year from the time when the goods ought to be delivered. This Article

ferred to. RADHA SHYAM BASAK *v* SECRETARY OF STATE FOR INDIA (1916) I. L. R. 44 Calc. 16

LUNACY ACT (XXXV OF 1858).

See HINDU LAW—ADOPTION

I. L. R. 40 Mad. 660

LUNACY ACT (IV OF 1912).

——— *s 72—Lunatic—Appointment of guardian to person of lunatic—Wife of lunatic not necessarily excluded by s 72* S 72 of the Lunacy Act is a kind of warning that particular care should be exercised by the court where a person is entitled to inherit part of the property of a lunatic, and is therefore benefited by his death, to see that the appointment of such person as guardian of the person of the lunatic is a beneficial one The section, however, does not absolutely preclude such an appointment and in some cases the appointment of, for instance, the wife of the lunatic may be the most suitable, notwithstanding that she is one of the heirs *Fazal Rab* v *Khatun Bibi, I L R 15 All 29,* distinguished AMIR KAZIM *v* MUSI IMRAN (1916) I L. R. 39 All 158

LUNATIC

See DECREE I L R. 44 Calc. 627

See LUNACY ACT (IV OF 1912), s. 72

I. L R. 39 All. 158

——— adoption by—

See LUNACY ACT (XXXV OF 58).

I L R. 40 Mad 660

LURKING HOUSE-TRESPASS

——— *Theft—Penal Code (Act XLV of 1860) ss 456, 457, 380—Trial for house*

On a trial for offences under ss 457 and 380 of the Penal Code, although the alleged intention, *viz*, to commit theft has failed, the Court can, under s 238 of the Criminal Procedure Code, convict the accused of a minor offence, under s 456 of the Penal Code, if he has not been prejudiced thereby Where on an allegation that the accused entered the room of a widow at night and committed theft, he was tried summarily for offences under ss. 457 and 380 and set up the defence of previous intrigue and entry with such intent at her invitation, but the Court disbelieved the stories of theft and intrigue and found the entry to have been without her consent and in order to make immoral proposals to her to her annoyance

s. 456 of the

accused had

stances. *Jha*

W N 696.

Chakrabarty v *Queen Empress, I L R 16 Calc. 657, Balmakand Ram* v *Ghansamram, I L R 22 Calc 391, Premanundo Shaha* v *Brindabun Chung, I L R 22 Calc. 994, Emperor* v *Ishri, I L R 29 All 46, Sher Singh* v *Empress (1883), Punj Rec 14, Lalji Ram* v *Queen Empress, (1898) Punj Rec 12, Ramrang* v *King Emperor (1902), Punj Rec 18, Queen Empress* v *Balu, (1886) Ratan unrep Cr C 293,* approved. In determining the question of prejudice, the nature

LURKING HOUSE-TRESSPASS—*concld.*

of the case made at the trial, the evidence given and the line of defence of the accused are matters to be taken into consideration. *Reg.* v. *Govindas Haridas, 6 Bom. H. C. 96*, referred to. To sustain a conviction under s. 456 of the Penal Code, it is not necessary to specify the criminal intention in the charge. It is sufficient if a guilty intention contemplated by s. 441 is proved. The intention may be determined from direct evidence or from the conduct of the accused and the attendant circumstances of the case. *Balmakand Ram* v, *Ghansamram, I. L. R. 22 Calc. 391, Rex* v. *Dixon 3 M. & S. 11*, referred to. Every judgment must be read as applicable to the particular facts proved or assumed to be proved. *Quinn* v. *Leathem, [1901] A. C. 495*, followed. KARALI PRASAD GURU *v.* EMPEROR (1916) . **I. L. R. 44 Calc. 358**

M

MACHINERY.

——— hire of—

See HIRE-PURCHASE AGREEMENT.
I. L. R. 44 Calc. 72

MADRAS ACT.

——— **1865—VII.**

See MADRAS IRRIGATION CESS ACT.

——— **1873—III.**

See MADRAS CIVIL COURTS ACT.

——— **1884—IV.**

See DISTRICT MUNICIPALITIES ACT, MADRAS.

——— **1889—III.**

See TOWNS NUISANCE ACT, MADRAS.

——— **1900—I.**

See MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS ACT.

——— **1900—V.**

See IRRIGATION CESS AMENDMENT ACT.

——— **1902—I.**

See MADRAS COURT OF WARDS ACT.

——— **1904—III.**

See MADRAS CITY MUNICIPAL ACT.

——— **1905—III.**

See LAND ENCROACHMENT ACT, MADRAS.

——— **1908—I.**

See ESTATES LAND ACT, MADRAS.

——— **1914—I.**

See HINDU TRANSFERS AND BEQUESTS ACT, MADRAS.

MADRAS CITY MUNICIPAL ACT (III OF 1904).

——— **s. 150**—" *Kept,*" *meaning of—Vehicle under repair is one kept and taxable.* Even a vehicle that is under repair and therefore unfit for immediate use, is a vehicle " kept " within the meaning of s. 150 (*1*) of the Madras City Municipal Act (III of 1904) and so becomes liable to be taxed under that section. The word " kept " is not qualified by the words " for hire." It is not

MADRAS CITY MUNICIPAL ACT (III OF 190
—*concld.*

——— **s. 150**—*concld.*

necessary that the owner should have possessi of the vehicle in order to make it taxable. KRISH ROW *v.* MADRAS MUNICIPAL CORPORATION (1916)
I. L. R. 40 Mad. 5

MADRAS IRRIGATION CESS.

——— *Water Rights—Arti cial Channel—Right of Zamindar—Permane Settlement—" Engagements with Government "- Madras Irrigation-Cess Acts VII of 1865 and V 1900.* By the Madras Irrigation Cess Act (VII 1865), as amended by Madras Act V of 190 s. 1, whenever water is supplied or used for pu poses of irrigation from any river, stream, channe tank, or work belonging to, or constructed b Government, a separate cess for such water ma be levied on the land so irrigated, provided (*int alia*) " that where a zamindar or inamdar ..... i by virtue of engagements with the Governmen entitled to irrigation free of separate charge, n cess under this Act shall be imposed for wate supplied to the extent of this right and no more. At the permanent settlement the Governmen settled in four zamindars lands contiguous t a river, together with four artificial irrigation chan nels and sluices connecting them with the rive The sanads did not refer to the channels or sluice The appellants were the present holders of one o the four zamindaris, the sluices of one only of th channels being upon their lands. The other thre zamindaris had been purchased by the Governmen The appellants used for irrigation water derive from the river through all four channels. Th Government claimed to be entitled to levy ces under the above Act upon the appellants' land for the irrigation so far as it included crops no customary at the time of the permanent settle ment. *Held*, assuming, but not deciding, that th river belonged to the Government, (*i*) that th settlement was an engagement with the Governmen within the meaning of the proviso ; (*ii*) that unde the sanads the zamindar in whose estate the sluice of each of the channels were situated acquired th right to take from the river for irrigation a amount of water limited by the then size of th channels and nature of the sluices, but not limite by the irrigation then customary ; (*iii*) that afte the water had passed into the channels the Govern ment had no rights in respect of it save as owner of the three zamindaris ; (*iv*) that the rights o the owners *inter se* in the water flowing in th channels were analogous to those of the riparian owners in a natural stream ; (*v*) that, there being no evidence that more water was being taken from the river than was justified by the sanads, the appellants were not liable to pay Cess. The law of the Madras Presidency as to rivers and streams differs in some respects from English law, and it is quite possible that the former law recognises some proprietary right of the Government in water flowing in them. KANDUKURI BALASURYA ROW *v.* SECRETARY OF STATE FOR INDIA (1917)
L. R. 44 I. A. 166
21 C. W. N. 1089

MADRAS IRRIGATION CESS ACT.

See IRRIGATION CESS ACT, MADRAS (VII OF 1865).

MADRAS IRRIGATION CESS ACT (VII OF 1865).

See MADRAS IRRIGATION CESS
L. R. 44 I. A. 166

MADRAS UNIVERSITY.

See SPECIFIC RELIEF ACT (I OF 1877), s 45 . I. L. R. 40 Mad. 125

MADRAS UNIVERSITY REGULATIONS.

———— Regulation 64—

See SPECIFIC RELIEF ACT (I OF 1877) s 45 I. L. R. 40 Mad. 125

MAGISTRATE.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s 188
I. L. R. 41 Bom. 667

MAHA BRAHMINS.

See TRANSFER OF PROPERTY ACT (IV OF 1882), ss 6, 58 . I. L. R. 39 All. 196

MAHOMEDAN LAW.

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See PRE EMPTION I. L. R. 39 All. 133
I. L. R. 44 Calc. 675

MAHOMEDAN LAW—ALIENATION.

———— *Private sale by one of* ... deceased Mahomedan, in possession of the whole or part of the estate of the deceased, sells property in his possession forming part of the estate for discharging the debts of the deceased, such sale is not binding on the other co heirs or creditors of the deceased *Pathummabi v Vittil Ummachabi I L R 26 Mad 734*, overruled *Hasan Ali v Mehdi Husain, I L R 1 All 533*, dissented from *Quære* Whether a decree against one of the heirs of a deceased Mahomedan binds the others ABDUL MAJEETH v KRISHNAMACHARIAR (1916)
I. L. R. 40 Mad. 243

MAHOMEDAN LAW—DIVORCE.

———— *Divorce—Revocation—Validity of the bedai form of divorce* *Held*, that it is not every kind of divorce which is re vocable according to the Mahomedan Law but only those made in certain forms The *bedai* form of divorce is a perfectly legal form and is irrevocable *In re Abdul Ali Ismailji, I L R 7 Bom 180*, followed AMIR UD DIN v KHATUN BIBI (1917) . I. L. R. 39 All. 371

MAHOMEDAN LAW—GIFT.

———— *Deed of gift—Gift with a condition attached—Obligation in the nature of trust—Construction of document* A Mahomedan woman made a deed of gift in favour of three persons, Mirza Vazir Beg Imatiyaj Begum and Chaggan Bibi in the following terms "The lands have been given to you three as gifts All my rights of ownership are transferred to you The vahiwat or management of the lands should be made by one of you three, namely, Vazir Beg, and after paying Government dues, Rs 40 should be paid out of the residue of the income annually to the Imatiyaj Begum, and the remainder should be divided equally between Mirza Vazir Beg and Chaggan Bibi Mirza Vazir Beg should have vahiwat and give income according to their shares to the two They have no right of claiming division of the lands from Mirza Beg, but only a right of claiming income every year" A suit was brought by Imatiyaj Begum to enforce her ... therein was void and that he was absolutely entitled *Held*, that the gift was good and complete under the Mahomedan law and the deed could be supported in favour of the plaintiff TAVAKALBHAI v IMATIYAJ BEGUM (1916)
I. L. R. 41 Bom. 372

MAHOMEDAN LAW—MARRIAGE.

1.———— *Marriage with a wife's sister during the continuance of first marriage—Whether invalid or wholly void—Legitimacy of the issue of such marriage* Under the Mahomedan Law the marriage with a wife's sister during the subsistence of the first marriage is only *fasid* (invalid) and not *batil* (void) The issue of such marriage is legitimate and can inherit *Aizunnissa Khatoon v Karimunnissa Khatoon I L R 23 Calc 130* dissented from TAJBI v MOWLA KHAN (1917) I. L. R. 41 Bom. 485

2.———— *Marriage of girl of below the age of 15 after death of her parents—Uncle or grandmother, if entitled to consent—Proof that she had attained puberty and consented to marriage, in the absence of guardian's consent essential—Burden of ... objection ... recorded b... to be read* ... law, a girl becomes a major on the happening of either of two events *first*, the completion of her fifteenth year, and, *second*, on her attainment of a state of puberty at an earlier period The ... ho ... no ... he ... admission of hearsay evidence is not merely that it prolongs litigation, and increases its cost but that it may unconsciously be regarded by judicial minds as corroboration of some piece of evidence legally admissible and thereby obtain for the latter quite undue weight and significance The reading of undoubtedly hearsay evidence recorded by a Commissioner who is not empowered to rule out evidence on the ground of inadmissibility disapproved ATRIA BEGUM v IBRAHIM RASHID (1916) . . . 21 C. W. N. 345

MAHOMEDAN LAW—PRE-EMPTION.

See PRE EMPTION . I. L. R. 39 All. 133

MAHOMEDAN LAW—PRE-EMPTION—*contd.*

1. ——————— *Exercise of right, when enforceable—Question of law, at what stage of case can be raised—Decree, nature of—When Court should take notice of events happening after institution of suit.* A person who seeks the assistance of a Court with a view to enforce a right of pre-emption is bound to establish that the right existed at the date of the sale, at the date of the institution of the suit, and also at the date of the decree of the primary Court. *Ram Gopal* v. *Piari Lal, I. L. R. 21 All. 441*, and *Tafazzul Husain* v. *Than Singh, I. L. R. 32 All. 567*, followed. When a question of law is raised for the first time in a Court of last resort upon the construction of a document or upon facts either admitted or proved beyond controversy, it is not only competent but expedient in the interests of justice to entertain the plea. *Connecticut Fire Insurance Co.* v. *Kavanagh*, [*1892*] *A. C. 473*, followed. Ordinarily the decree in a suit should accord with the rights of the parties as they stand at the date of its institution. But where it is shown that the original relief claimed has, by reason of subsequent change of circumstances, become inappropriate or that it is necessary to have the decision of the Court on the altered circumstances in order to shorten litigation or to do complete justice between the parties, it is incumbent upon a Court of justice to take notice of events which have happened since the institution of the suit and to mould its decree according to the circumstances as they stand at the time the decree is made. *Rai Charan Mandal* v. *Biswa Nath Mandal, 20 C. L. J. 107*, referred to. NURI MIAN *v.* AMBICA SINGH (1916)

I. L. R. 44 Calc. 47

2. ——————— *Pre-emption—Property situate in Kolaba District—A co-sharer selling his share to a Hindu purchaser—Applicability of the law of pre-emption by agreement of parties—Observance of the formalities of Talab-i-Mowasibat and Talab-i-Ishhad before the completion of sale, whether premature—Right of an administrator to continue the suit on the death of the pre-emptor pendente lite—Probate and Administration Act* (*V of 1881*), *s. 89.* S, a Mahomedan owner of an undivided one-fourth share in certain Inam villages in Kolaba District, entered into an agreement with the defendants on the 14th October 1908 for the sale of his share for Rs. 30,000, the terms of the agreement being that if the owner of the three-fourths share (*i.e.*, the plaintiff) was willing to purchase S's share and if S agreed to the purchase he should immediately return the amount received from the defendants. On the same day a notice was accordingly served on the plaintiff by S asking him if he was anxious to pre-empt the quarter share. On receipt of this notice, the plaintiff on the 15th October performed the *Talab-i-Mowasibat.* On the 17th October, the plaintiff through his attorneys wrote a letter to S declaring his intention to exercise the right of pre-emption and at the same time performed *Talab-i-Ishhad.* The copies of S's notice and plaintiff's solicitor's reply of the 17th October were duly forwarded to the defendants and whilst the correspondence between S and the plaintiff was going on the former received the full amount of the purchase money from the defendants and executed a sale deed in their favour. The plaintiff thereupon sued to recover the share by right of pre-emption. The defendants contended *inter alia* that the right of pre-emption could not be exercised against them as they were Hindus; that the property over which it was claimed was not a small one; that the law of pre-emption was not made applicable to Kolaba District; that the *talabs* performed before the completion of the sale were premature. On these facts, *Held,* (*i*) that the defendants were bound to comply with the plaintiff's demand for a transfer of the quarter share in the villages to him, since it was clear from the contract and the subsequent correspondence that the defendants agreed with the vendor that the law of pre-emption applying between the vendor and his co-sharer should be applicable to the defendant's purchase; (*ii*) that the action of the plaintiff in performing the *talabs* was not premature as the intention of the parties as to the date when the bargain was to be considered as concluded was the date of the contract itself; (*iii*) that there was no limit to the size of the property of which pre-emption might be claimed by a co-sharer, though there was a limit in the case of those who based their claim on vicinage. A question being raised as to whether on the death of a pre-emptor *pendente-lite*, a suit can be proceeded with by his administrator under s. 89 of the Probate and Administration Act, 1881. *Held,* that the suit could be proceeded with by the administrator as the relief sought, namely, conveyance of a share, could be enjoyed by a personal representative after the death of the pre-emptor inasmuch as it added the property in suit to the estate of the deceased. SITARAM BHAURAO *v.* SAYAD SIRAJUL (1917) . **I. L. R. 41 Bom. 636**

MAHOMEDAN LAW—WAKF.

1. ——————— *Wakf—Deed providing for charitable purposes, and also for support of grantors' family and descendants—Test whether deed is valid as a wakf or whether wakf is illusory—Property substantially given to charities, the surplus to support family—Mussalmans Wakf Validating Act* (*VI of 1913*). The test of whether a deed was, or was not, valid as a wakf in the cases decided before Act VI of 1913, was that if the effect of the deed was to give the property substantially to charitable uses it would be valid; but if the effect of it was to give the property in substance to the settlors' family it would be invalid under Mahomedan Law. *Mahomed Ashanulla Chowdhry* v. *Amarchand Kundu, I. L. R. 17 Calc. 498; L. R. 17 I. A. 28, Abdul Fata Mahomed Ishak* v. *Rasmaya Dhur Chowdhri, I. L. R. 22 Calc. 619; L. R. 22 I. A. 76*, and *Majubunissa* v. *Abdul Rahim, I. L. R. 23 All. 233, 242; L. R. 28 I. A. 15, 23*, referred to. To determine whether any particular case answers the test, all the circumstances existing at the date of the deed must be taken into consideration, such as the financial position of the grantor, the amount of the property, the nature and the needs of the charity, their probable or possible expansion, the priority of their claim upon the settled fund and such like. It does not follow, because the share of the income going to the family, which may be a dwindling sum, is for a time larger than that going to the charities, that the effect of the deed is to give the property in substance to the family, and that it is therefore invalid as a wakf. In the present case the sum devoted to the charities was not large though for the present it was abundant for their needs; but having regard to all the circumstances of the case, the dominating purpose and intention of the grantors in executing the deed was to provide

MAHOMEDAN LAW—WAKF—*concld*

adequately for those charities. That was their main and paramount object The secondary and subsidiary object was to secure for their family and descendants any s...

The provisions of the deed carry out these objects, and in their Lordships' opinion the effect of the instrument is not to give the trust property in ...

I. L R 40 Mad 116
L R 44 I. A. 21

2 ——————— *Waqf—Minor mutavalli—Jurisdiction of Court to appoint guardian in respect of waqf property—Guardians and Wards Act (VIII of 1890)* A Mahomedan ...

petent to the District Judge to appoint a person to perform the duties of the *mutawalli* pending either the coming of age of the minors or the institution of a regular suit by some persons interested in the endowment to contest the arrangement made by him EJAZ AHMAD v KHATUN BEGAM (1916) I L R 39 All. 288

MAHOMEDAN LAW—WILL

——————— *Will—Bhagdari property—Will in favour of widow and daughter—Suit by a residuary heir of the testator for a declaration that the will was invalid—Bhagdari custom—Testamentary capacity of the owner—Rule of Mahomedan Law to be applied—Validity of the will* A Mahomedan Bhagdar made a will by which he ...

of the will He, therefore, sued for a declaration that the will was invalid under Mahomedan Law so far as the *Bhag* property was concerned and that he was entitled to succeed to it after the death of the widow under the Bhagdari custom The question being raised as to what was the rule which regulated the testator's power to make the will *Held*, that the rule of Mahomedan Law was the only law which could be applied and according to it the will was invalid The plaintiff was, therefore, the presumptive reversioner under the Bhagdari custom AHMAD ASMAL v BAI BIBI (1916) I. L R 41 Bom. 377

MAHOMEDANS.

See LIMITATION ACT (IX OF 1908), SCH I, ART 127 I. L R. 41 Bom. 588

MAINTENANCE

See HINDU LAW—MAINTENANCE.
I. L. R. 39 All 234

——————— future, including allowances, right to—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s 60 (*I*) I. L R 40 Mad. 302

MALABAR COMPENSATION FOR TENANTS IMPROVEMENTS ACT (MAD. I OF 1900).

——————— s. 19—

1. ——————— *Claim, subsequent to Act—Contract before the Act, fixing rate of compensa*...

Tenants' Improvements Act (Madras Act I of 1900), and when the question of the rate of compensation comes up for determination at a date after the introduction of the Act, it is not open to either party to the contract to elect to have the rates fixed according to the Act in preference to the rates mentioned in the contract *Kochikot Sreemana Vikraman* v *Modathil Ananta Patter*, *I L R 34 Mad 61*, *Paru Amma* v *Kunhikandan*, *I L R 36 Mad 410*, and *Kochu Rabia* v *Abdurahman*, *I L R 38 Mad 589*, overruled. RAYARAPPA ATIOTI v KELAPPA KURUP (1916)
I. L. R 40 Mad 594

2 ——————— *Lease—Stipulation for payment of fee in respect of trees cut down* A stipulation in a Malabar lease for the payment of *kuttikanam* (customary fee) to the landlord in respect of trees cut down is not necessarily contrary to the provisions of s 19 of the Malabar Compensation for Tenants' Improvements Act (Madras Act I of 1900) It is a question of fact to be determined in each case whether the cutting down of trees is an improvement or not, and whether the fee stipulated is reasonable or so unreasonable as to be prohibitive of the cutting down of trees at all *Semble* A customary fee of eight annas per tree is not unreasonable *Vasudevan Nambudripad* v *Valia Chathu Achan*, *I L R 24 Mad 47*, considered. RAJA OF COCHIN v KITTUNNI NAIR (1916) I. L. R 40 Mad 603

MANU KYAY.

——————— Book X, rules 5, 14—

See BURMESE LAW
I. L. R. 44 Calc. 379

MARK BY ILLITERATE EXECUTANT.

See TRANSFER OF PROPERTY ACT (IV OF 1882), s 59 I. L. R. 41 Bom. 384

MARKETABLE TITLE.

——————— proof of—

See VENDOR AND PURCHASER
I. L. R. 41 Bom. 300

MARKSMAN.

——————— execution of a promissory note by—

See NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881), s 27
I. L. R. 40 Mad. 1171

MARRIAGE.

See BREACH OF CONTRACT
I. L. R. 41 Bom. 137

See DAMAGES . I. L. R. 41 Bom. 137

See DIVORCE ACT (IV OF 1869), s 14
I. L. R. 41 Bom 36

MISTAKE.

—— in description of plaintiff—

See Civil Procedure Code Act (V of 1908), O. I, r. 10.
I. L. R. 40 Mad. 743

MITAKSHARA.

See Hindu Law—Joint Family.
I. L. R. 39 All. 437

MITTADAR OR ZAMINDAR.

—— assignment of jodi under permanent sanad—

See Inamdar I. L. R. 40 Mad. 93

MIXED FUND.

See Hindu Law—Joint Family Property . . L. R. 44 I. A. 201

MOKARARI LEASE.

See Minerals . L. R. 44 I. A. 246

MORTGAGE.

See Mortgage Decree.

See Mortgage Suit.

See Usufructuary Mortgage.

See Civil Procedure Code (Act XIV of 1882), ss. 278, 282, 283, 287.
I. L. R. 41 Bom. 64

See Civil Procedure Code (1908), O. II, r. 2; O. XXXIV, rr. 2, 4.
I. L. R. 39 All. 505

See Civil Procedure Code (1908), O. XXXIV, r. 5.
I. L. R. 39 All. 641

See Civil Procedure Code, 1908, O. XXXIV, r. 14.
I. L. R. 39 All. 36

See Dekkhan Agriculturists' Relief Act (XVII of 1879), s. 13.
I. L. R. 41 Bom. 453

See Evidence. I. L. R. 44 Calc. 345

See Evidence Act (I of 1872), ss. 68, 69.
I. L. R. 39 All. 241

See Evidence Act (I of 1872), s. 92.
I. L. R. 39 All. 300

See Hindu Law—Alienation.
I. L. R. 39 All. 500

See Hindu Law—Joint Family.
I. L. R. 39 All. 437

See Mortgage Deed.
I. L. R. 41 Bom. 384

See Mortgagor or Mortgagee.
I. L. R. 41 Bom. 357

See Penalty . I. L. R. 44 Calc. 162

MORTGAGE—*contd.*

See Registration Act (XVI of 1908), s. 17 . . I. L. R. 41 Bom. 510

See Transfer of Property Act (IV of 1882), s. 58 . I. L. R. 39 All. 244

See Transfer of Property Act (IV of 1882), ss. 83, 84.
I. L. R. 39 All. 719

See Transfer of Property Act (IV of 1882), s. 91 . I. L. R. 39 All. 536

See Vendor and Purchaser.
I. L. R. 41 Bom. 300

—— by conditional sale—

See Pre-emption I. L. R. 39 All. 544

—— by deposit of title-deeds—

See Registration Act (XVI of 1908), s. 49 . . I. L. R. 40 Mad. 547

—— by Karta—

See Hindu Law—Joint Family Property . . L. R. 44 I. A. 163

—— by Talukdar—

See Broach and Kaira Incumbered Estates Act (XXI of 1881), s. 28.
I. L. R. 41 Bom. 546

—— intention to—

See Evidence . L. R. 44 I. A. 236

—— money borrowed on, suit to recover—

See Hindu Law—Endowment.
I. L. R. 40 Mad. 402

—— of occupancy holding —

See N. W. P. Rent Act (XII of 1881), s. 9 . . I. L. R. 39 All. 186

—— of rights of Maha Brahmins—

See Transfer of Property Act (IV of 1882), ss. 9, 58. I. L. R. 39 All. 196

—— proof of—

See Evidence Act (I of 1872), ss. 68, 69.
I. L. R. 39 All. 109, 112

—— surplus proceeds—

See Transfer of Property Act (IV of 1882), s. 69. I. L. R. 40 Mad. 767

—— with possession by lessee—

See Transfer of Property Act (IV of 1882), s. 108 (j).
I. L. R. 40 Mad. 1111

1. ASSIGNMENT.

—— *Suit by asignee of mortgage-bond—Set-off by the defendant of a decree-debt against the assignee—Equitable set-off, whether allowable—Transfer of Property Act (IV of 1882), ss. 3 and 132—Actionable claim, nature of.* The doctrine of equitable set-off is always confined to unascertained sums arising out of the same transaction. *Subramanian Chettiar v. Muthuswami Aiyangar, 17 Mad. L. J., 481,* dissented from. Where a mortgage is transferred without the privity of the mortgagor, the transferee takes subject to the state of account between the mortgagor and mortgagee at the date of the transfer, but not subject to any independent debt in no way connected with the mortgage. *Turner v. Smith, [1901] 1 Ch. 742,*

MORTGAGE—*contd* .

1 ASSIGNMENT—*concld*

followed *Chinnayya Rawuthan* v *Chidambaram Chetti, I L R 2 Mad 212,* distinguished SUBRAMANIA AIYAR v SUBRAMANIA PATTAR (1916)
— **I. L R. 40 Mad. 683**

2 BY GUARDIAN

1 ——————— *By certificated guardian—Sanction to raise loan granted by District Judge but subsequently revoked—Money lent without notice of revocation and applied by guardian for minor's benefit —Effect of the revocation of sanction on the mortgage—Rate of interest* The certificated guardian of a minor obtained the leave of the District Judge to raise a loan for a certain amount from the plaintiff Subsequently the District Judge called upon the guardian to state whether the mortgage had been executed or not and on the guardian's failure to do so the Judge revoked the order No notice of revocation was

amount was applied to the benefit of the minor's estate The rate of interest was not placed before the District Judge and was not sanctioned by him but that stipulated in the mortgage bond was

guardian The order was merely a voidable one

the amount advanced by him on the mortgage bond but only to interest at the rate of 12 per cent simple interest MANASHARAM DAS *v* AHMED HOSAIN PRODHAN (1916) . **21 C. W N. 63**

2. ——————— *Mortgage executed* ... *minor son with* ... *if justified in* ... *king no further* ... *borrowed, lender* ... A *mardanashin* lady acting as

Held, that the lender was not bound to go behind the order of the District Judge sanctioning the loan and was entitled to rely upon it, and if he acted *bona fide* he was not bound to see to the application of the money AKHIL CHANDRA SAHA *v* GIRISH CHANDRA SAHA (1917) **21 C W. N. 864**

3 CONSTRUCTION.

1 ——————— *Agreement postponing payment of interest and selling property to* ... *contract* ... *payment of* ... *cution of* ... *transfer* ... *Courts* ... *ansfer of* ... *mortgage*

MORTGAGE—*contd.*

3 CONSTRUCTION—*contd*

deed of certain land was executed in favour of the appellant to secure re payment of Rs 50,000 with interest, which the mortgagor expressly covenanted to pay, on 30th December 1905, which was afterwards extended for three months from 3rd January 1906 On 4th April 1906, the mortgagor, being unable to pay the interest, wrote as follows to the mortgagee "I write this to inform you that as I have not got the interest due on Rs 50,000 ready now, I request you to give me three months more for payment to you of all interest due thereon. Should I fail to do so on or before 6th July 1906, I agree to the whole land being sold to you for Rupees one lakh (Rs 1,00 000) After deducting out of this amount Rs 50,000 already received by me and all interest due thereon, the balance should be paid to me when the land shall become yours unconditionally The mortgagee agreed to these terms, and the loan was renewed on 6th April 1906, the interest was not paid on 6th July, and mortgagor refused to execute a conveyance of the property In a suit for specified performance of the contract of 4th April 1906, the mortgagee obtained a decree in May 1909, but he only entered into possession of the property on 24th March 1911 On an application for execution of the decree, a question arose as to the manner in which the purchase money payable under the contract ought to be calculated, and an Appellate Bench of the Chief Court decided that the mortgagee was only entitled to bring into account the amount due for principal and interest up to 6th July 1906 *Held* by the Judicial Committee (reversing that

interest were governed by the express provisions of the contract *Semble*, The rules of English Courts of Equity had no application to the sale of real estate in Lower Burma, s 54 of the Transfer of Property Act expressly providing that (apart from a registered instrument) such a contract created no interest in, or charge upon the land MAUNG SHWE GOH *v* MAUNG INN, (1916)
I L. R. 44 Calc. 542

2 ——————— *Evidence Act (I of*

quantity of land to secure the loan provided that each of the mortgagors was liable for the whole *amount of the mortgage and interest* and that the loan should be repaid within two months with

that the mortgagee would ... gagors liable for his own share only was inadmissible That the agreement to pay interest at 75 per cent per annum was in the circumstances of the case a stipulation by way of penalty and the mortgagee was entitled under s. 74 of the Contract Act to only reasonable compensation

MORTGAGE—*contd.*

3. CONSTRUCTION—*contd.*

which in this case was interest at 15 per cent. *Per* MOOKERJEE, *J.*—That it is competent to a Court to grant relief whenever the stipulation for payment of interest at a specified rate appears to the Court to be a stipulation by way of penalty. What constitutes a stipulation by way of penalty must be determined in each individual case upon its own special circumstances. *Per* SANDERSON *C. J.*—Release by the mortgagee of one of several co-mortgagors without expressly reserving his remedies against the others, does not release the latter. SANAT KUMAR DAS *v.* INDRA NATH BARMAN (1916). **21 C. W. N. 740**

3. ——————— *Question as to whether mortgage was or was not extinguished by subsequent mortgage—Intention to release it shown by return of mortgage deed—Intention frustrated by subsequent mortgage becoming unenforceable—Plea not consistent with equity and good conscience—Contract Act (IX of 1872) s. 41—Contract not performed.* The question in this appeal was whether the appellants could enforce against the respondents a mortgage, dated the 13th of November 1876, for Rs. 5,500 of a five-sixth share in a certain mauza. The mortgagor died leaving a widow and a separated nephew who was the owner of the other one-sixth share of the mauza, which, in 1879 and 1881, he mortgaged to the same mortgagee for Rs. 1,000 and Rs. 3,000 respectively. In September and October 1887, the widow and the nephew executed two mortgages to the same mortgagee, each purporting to affect the entire mauza, the first being in respect of the principal and interest due on the mortgage of 1876, and the second for the principal and interest due on the nephew's mortgages of 1879 and 1881. On the execution of these the mortgagee handed the mortgage deed of 1876 to the nephew. In 1896 the mortgagee brought a suit on the basis of the mortgages of 1887 in which a decree was made against the entire mauza. The nephew and the widow both appealed, but the nephew died and his heirs (the respondents in the present appeal abandoned his appeal. The widow's appeal was allowed by the High Court it being held that the deeds of 1887 (even if executed by her) were not binding on her. Pending an appeal by the mortgagee to the Privy Council the widow died, and the respondents in the present appeal were made parties in her place as heirs of her husband, the mortgagor of the deed of 1876: they succeeded therefore to the property subject to that mortgage, but free from any further charge created by the nephew. *Held* that the intention of the mortgagee after the two deeds of 1887 were executed was to accept in them a new security but that intention was entirely frustrated by the fact that the deeds of 1887 were held to be not binding on the widow; and it was not in accordance with equity and good conscience that the respondents, who had successfully maintained that the transaction embodied in the deeds of 1887 was not binding on the widow, and consequently did not bind them as the heirs of her husband, should now claim the benefit of that transaction as a release of the mortgage of 1876. Their Lordships therefore, in the events that had happened, were of opinion that the mortgage of 1876 was wholly unaffected by the mortgages of 1887. S. 41 of the Contract Act (IX of 1872) on which the High Court had relied had no application to the present case; it applies only where a contract has been in fact performed by some person other than the person bound thereby. Here the contract contained in the mortgage of 1876 had not in fact been performed at all. HAR CHANDI LAL *v.* SHEORAJ SINGH (1916) . **I. L. R. 39 All. 178**

4. EXONERATION.

——————— *Suit for sale of one item exonerating other items mortgaged—Right of mortgagee to exonerate—Contribution, duty of, whether lost by exoneration—Transfer of Property Act (IV of 1882), ss. 60 and 82.* A mortgagee seeking to realize the amount due to him brought a suit for sale of one only of the items mortgaged impleading therein the mortgagor and the person who purchased the equity of redemption in the one item in execution of a money decree. The mortgagee exonerated from liability the other items mortgaged: *Held* by the FULL BENCH that, a mortgagee voluntarily releasing from the suit a portion of the mortgaged property is not bound to abate a proportionate part of the debt and is entitled to recover the whole of the mortgage, amount from any portion of the mortgaged property. *Ponnusami Mudaliyar* v. *Srinivasa Naickan, I.L.R. 31 Mad. 333,* and *Surjiram Marwari* v. *Barhamdeo Persad, 1 C.L.J. 337,* dissented from. *Semble:* A release of certain items by the mortgagee has not the effect of releasing those items from liability for contribution under s. 82 of the Transfer of Property Act. *Jugal Kishore Sahu* v. *Kedar Nath, I. L. R. 34 All. 606,* referred to. PERUMAL PILLAI *v.* RAMAN CHETTIAR (1917) **I. L. R. 40 Mad. 968**

5. MORTGAGEE, RIGHTS OF.

——————— *Leasehold property—Mortgagee, if entitled to pay rent to preserve property from being lost.* The mortgagee is entitled to preserve mortgaged property from being lost for non-payment of rent. Where rent is thus paid after the preliminary decree and before the final decree, the money paid for rent should in the final decree be added to the mortgage money found due in the preliminary decree. ALLAHABAD BANK, LD. *v.* MATI LAL BARMAN, (1916) **I. L. R. 44 Calc. 448**

6. REDEMPTION,

1. ——————— *Suit for redemption—Adverse possession—Mortgagee in proprietary possession under an agreement unregistered but acted upon for a very long period.* The parties to a mortgage by conditional sale, executed in 1869, entered into an agreement in 1876 whereby the mortgagor gave up all his equity of redemption in the property mortgaged. The agreement was not registered, but both the parties consented to the complete transfer of the equity of redemption and both parties acted on the agreement for very nearly forty years. *Held,* on a suit being brought in 1912 for redemption of the mortgage of 1869, that the mortgagees or their predecessors in title had been in adverse possession since the year 1876, and the suit was barred by limitation. *Mahomed Musa* v. *Aghore Kumar Ganguli, I. L. R. 42 Calc. 801,* and *Usman Khan* v. *N. Dasanna*

MORTGAGE—contd

6 REDEMPTION—contd

I L R 37 Mad 515, referred to KHEDU RAI, v SHEO PARSON RAI (1917)
I. L R 39 All 423

2 —————————— *Suit for redemption—Major portion of mortgaged property purchased by mortgagee—Suit by one only of the heirs of the mortgagor to redeem the whole of the remaining share in the mortgaged property* Out of the original 16 annas ...

to redeem the whole of the remaining 2 annas and 8 pies The other heirs were made parties, the suit as *pro forma* defendants and consented to the plaintiff redeeming to the whole of the remaining share *Held* that, notwithstanding this, the plaintiff was only entitled to redeem her own personal share *Kuray Mal* v *Puran Mal, I L R, 2 All 565* and *Munshi* v *Daulat, I L R 29 All 262* followed *Sakharam Narayan* v *Gopal Lakshuman, I L R 10 Bom 656* (Note), not followed. ZAIB UN NISSA BIBI v MAHARAJA PARBHU NARAIN SINGH (1917)
I L. R 39 All 618

3 —————————— *Annuity provided for by terms of deed—Equity of redemption acquired by mortgagee—Suit by heirs of annuitant to recover arrears of annuity* By the terms of a ... arge ... un ... eries ... ame ... hole ... the ... for ... ort ... gage LACHMI NARAIN v SAJJADI BEGAM (1917)
L. R. 39 All 700

7 SALE OF MORTGAGED PROPERTY

1 —————————— *Decree—Death of judgment-debtor after decree nisi but before order absolute—Order absolute made without bringing all the legal representatives on the record—Sale in execution of decree—Title of purchaser at such sale* A Hindu widow was in possession of a one sixth share of her husband s estate upon a ...

against her She then died, and the son who was living jointly with her, was alone brought on the record as her legal representative An ...

the present action for recovery of possession *Held,* that the order absolute having been obtained against one only out of several heirs, there was not in existence any decree under which the interest of the other heirs could be sold, and consequently the plaintiffs could not obtain possession *Mallarjun* v *Narhari, I L R*

MORTGAGE—contd

7 SALE OF MORTGAGED PROPERTY—concld

25 Bom 337, distinguished KUNDAN SINGH v. SURJA KUNWAR (1916) I. L. R. 39 All. 67

2 —————————— *Mortgage comprising both fixed rate and occupancy holdings executed before the passing of the Agra Tenancy Act, 1901—Suit for sale of the fixed rate holdings only* A mortgage made prior to the passing of the Agra Tenancy Act, 1901, comprised both occupancy and fixed rate holdings The mortgagee brought a suit for sale of the fixed rate holdings only *Held, that* the mortgage, so far as it related to the fixed rate holdings, was not bad and these being distinct from the occupancy holdings, the suit was maintainable *Kanhai* v *Tilak, 16 Indian Cases 42,* and *Badri Mallah* v *Sudama Mal, 10 All L J 176,* distinguished RAJENDRA PRASAD v RAM JATAN RAI, (1917)
I L R 39 All. 539

8 USUFRUCTUARY MORTGAGE

—————————— *Usufructuary mortgage, construction of—Balance remaining due to mortgagee at end of term of mortgage—Allegation in plaint of wrongful acts by mortgagor by which mortgagee was deprived of part of his security—Transfer of Property Act (IV of 1882) ss 58, 59 and 68—Mortgage deed unattested and not enforceable as a mortgage—Privy Council, practice of—Reinstatement and rehearing after decision of case ex parte* The question for determination on this appeal was whether the respondents (mortgagees) were entitled to recover from the appellant (mortgagor) the balance due on a usufructuary mortgage dated 14th April 1896 where it was alleged that they had been deprived of part of their security by the wrongful acts of the mortgagor It had been calculated that the amount borrowed, with interest, would be paid off by the rents of the properties mortgaged, on 14th January 1903 when they were to be returned to the mortgagor Both parties acted on the deed but on the date mentioned it was found that the mortgagee in possession had not by the collection of the rents received sufficient to discharge the principal of the loan with interest as mentioned in the deed In a suit brought by the mortgagee on 13th January 1909, the deficiency was attributed in paragraphs 6 and 7 of the plaint to the facts that the defendant (mortgagor) had taken rents which should have gone to the mortgagee, but which had not been paid over to him by the mortgagor and that the rents in some cases were less than those mentioned in the deed, and those were wrongful acts complained of The claim was for a mortgage decree under O XXXIV, r 4 of the Civil Procedure Code 1908 or in the alternative for a decree for the amount due on the footing of the personal liability of the mortgagor In the course of the suit it appeared that the mortgage deed had not been attested and the Subordinate Judge held that it could not, having regard to s. 59 of the Transfer of Property Act (IV of 1882) be enforced as a mortgage, which decision as it was not appealed from became final. The sole question therefore was whether the mortgagor was personally liable. The facts on which the allegations of wrongful acts by the mortgagor were based ... both Courts in India

MORTGAGE—*contd.*

3. CONSTRUCTION—*contd.*

which in this case was interest at 15 per cent. *Per* MOOKERJEE, *J.*—That it is competent to a Court to grant relief whenever the stipulation for payment of interest at a specified rate appears to the Court to be a stipulation by way of penalty. What constitutes a stipulation by way of penalty must be determined in each individual case upon its own special circumstances. *Per* SANDERSON *C. J.*—Release by the mortgagee of one of several co-mortgagors without expressly reserving his remedies against the others, does not release the latter. SANAT KUMAR DAS *v.* INDRA NATH BARMAN (1916). **21 C. W. N. 740**

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MORTGAGE—*contd*

6 REDEMPTION—*concld*

I L R 37 Mad 545, referred to KHEDU RAI, *v* SHEO PARSON RAI (1917) I L R 39 All 423

2 ——————— *Suit for redemption—Major portion of mortgaged property purchased by mortgagee—Suit by one only of the heirs of the mortgagor to redeem the whole of the remaining share in the mortgaged property* Out

parties, the suit as *pro forma* defendants and consented to the plaintiff redeeming to the whole

I L R 39 All 618

3 ——————— *Annuity provided for by terms of deed—Equity of redemption acquired by mortgagee—Suit by heirs of annuitant to recover arrears of annuity* By the terms of a charge ab un- series became whole the ble for mortgage LACHMI NARAIN *v* SAJJADI BEGAM (1917) I L R 39 All 700

7 SALE OF MORTGAGED PROPERTY

1 ——————— *Decree—Death of judgment-debtor after decree nisi but before order absolute—Order absolute made without bringing all the legal representatives on the record—Sale in execution of decree—Title of purchaser at such sale.* A Hindu widow was in possession of a one sixth share of her husband s estate upon a partition made among her sons. One of the sons lived jointly with her She made a mortgage of her share to raise money to pay off debt legally binding upon the estate The mortgagee brought a suit against her and obtained the *decree nisi* against her She then died, and the son who was living jointly with her, was alone brought on the record as her legal representative An order absolute was obtained and the shares of the widow and the son who was joint with her were sold and purchased by plaintiffs When they applied for mutation of names, they were opposed by the other sons. They thereupon commenced the present action for recovery of possession *Held*, that the order absolute having been obtained against one only out of several heirs, there was not in existence any decree under which the interest of the other heirs could be sold, and consequently the plaintiffs could not obtain possession. *Mallarjun v Narhari, I. L R 25 Bom 337*, distinguished KUNDAN SINGH *v* SURJA KUNWAR (1916) I. L. R 39 All. 67

2 ——————— *Mortgage comprising both fixed rate and occupancy holdings executed before the passing of the Agra Tenancy Act, 1901—Suit for sale of the fixed rate holdings only* A mortgage made prior to the passing of the Agra Tenancy Act, 1901, comprised both occupancy and fixed rate holdings The mortgagee brought a suit for sale of the fixed rate holdings only *Held*, that the mortgage, so far as it related to the fixed rate holdings, was not bad and these being distinct from the occupancy holdings, the suit was maintainable *Kanhai v Tilak, 16 Indian Cases 42* and *Badri Mallah v Sudama Mal, 10 All L J 176*, distinguished RAJENDRA PRASAD *v* RAM JATAN RAI, (1917) I L R 39 All. 539

8 USUFRUCTUARY MORTGAGE

——————— *Usufructuary mortgage, construction of—Balance remaining due to mortgagee at end of term of mortgage—Allegation in plaint of wrongful acts by mortgagor by which mortgagee was deprived of part of his security—Transfer of Property Act (IV of 1882), ss 58, 59 and 68—Mortgage deed unattested and not enforceable as a mortgage—Privy Council, practice of—Reinstatement and rehearing after decision of case ex parte* The question for determination on this appeal was whether the respondents (mortgagees) were entitled to recover from the appellant (mortgagor) the balance due on a usufructuary mortgage dated 14th April 1896 where it was alleged that they had been deprived of part of their security by the wrongful acts of the mortgagor It had been calculated that the amount borrowed, with interest, would be paid off by the rents of the properties mortgaged, on 14th January 1903 when they were to be returned to the mortgagor Both parties acted on the deed, but on the date mentioned it was found that the mortgagee in possession had not by the collection of the rents received sufficient to discharge the principal of the loan with interest as mentioned in the deed In a suit brought by the mortgagee on 13th January 1909, the deficiency was attributed in ... to the facts that ... ken rents which ... gee, but which ... the mortgagor and that the rents in some cases were less than those mentioned in the deed, and those were wrongful acts complained of The claim was for a mortgage decree under O XXXIV, r 4 of the Civil Procedure Code 1908 or in the alternative for a decree for the amount due on the footing of the personal liability of the mortgagor In the course of the suit it appeared that the mortgage deed had not been attested and the Subordinate Judge held that it could not, having regard to s 59 of the Transfer of Property Act (IV of 1882) be enforced as a mortgage, which ... final ... the ... s on ... y the mortgagor were based were not investigated, but both Courts in India held that on the construc-

MORTGAGE—*concld.*

8. USUFRUCTUARY MORTGAGE—*concld.*

tion of the deed it imposed a personal liability on the mortgagor and they made decrees in his favour. *Held* (reversing those decisions), that the nature and terms of the deed were such as to show that it was not originally intended that the mortgagor should be personally liable. The respondent ought to be given an opportunity of proving the allegations in paragraphs 6 and 7 of the plaint and of establishing that those facts were sufficient to bring s. 68 of the Transfer of Property Act into operation. The position of the mortgagor under that section could not, however, by reason of the deed, be better than it would have been if the mortgage had been duly attested. The case was for that purpose remitted to India for further trial. After the appeal had been heard *ex parte* and judgment had been given in favour of the appellant, the respondents were allowed to have it reinstated and reheard on the ground that the person with whom they came to an agreement to defend the appeal on their behalf, and to whom they advanced funds to pay the expenses of entering appearance, and taking other necessary steps in the conduct of the appeal, defrauded them, misappropriated the money without doing anything in the matter of the appeal, and left them in complete ignorance of its progress, until they discovered that there was not a word of truth in his misrepresentations and that the appeal had been decided *ex parte* against them. They had to pay the costs of the first hearing as the appellant was in no way to blame. RAM NARAIN SINGH *v.* ADHINDRA NATH MUKHERJI (1916)
I. L. R. 44 Calc. 388

MORTGAGE-DECREE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 48.
I. L. R. 40 Mad. 989

See SALE IN EXECUTION OF DECREE.
I. L. R. 44 Calc. 524

MORTGAGE-DEED.

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 59.
I. L. R. 41 Bom. 384

MORTGAGE SUIT.

———— *Preliminary degree—Payment out of Court if may be proved, though not certified, to oppose passing of a decree absolute—Civil Procedure Code (Act V of 1908), O. XXI, r. 2, O. XXXIV, r. 5.* Payment in pursuance of a preliminary decree, in a mortgage suit, if not made in Court, must be certified under O. XXI, r. 2, failing which the Court has no discretion except to follow the statutory form of the decree when no payment has been made into Court as mentioned in O. XXXIV, r. 5, unless there has been adjustment made under O. XXI, r. 2 of the Civil Procedure Code. PIRAN BIBI *v.* JITENDRA MOHUN MUKHERJI (1917) . . . . . **21 C. W. N. 920**

MORTGAGEE.

See ADVERSE POSSESSION.
I. L. R. 44 Calc. 425

See PUISNE MORTGAGEE.
I. L. R. 40 Mad. 77

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 67.
I. L. R. 40 Mad. 77

MORTGAGEE—*concld.*

———— **right of, to exonerate—**

See MORTGAGE . **I. L. R. 40 Mad. 988**

———— **right of, to pay rent—**

See MORTGAGE. **I. L. R. 44 Calc. 448**

MORTGAGEE IN POSSESSION.

See SALE FOR ARREARS OF REVENUE.
I. L. R. 44 Calc. 573

MORTGAGOR.

See ADVERSE POSSESSION.
I. L. R. 44 Calc. 425

MORTGAGOR AND MORTGAGEE.

———— *Suit to redeem—Decree obtained by mortgagee for a claim independent of the mortgage—Mortgagee purchasing the equity of redemption in execution of the decree—Leave to bid not obtained—Irregularity of practice—Sale not a nullity.* In 1888, plaintiffs mortgaged the property in suit with possession to defendant No. 1. In 1897, the defendant brought a suit against the mortgagor for a claim independent of the mortgage and in execution of the decree obtained therein the equity of redemption was sold and purchased *benami* by the defendant. In 1913, the plaintiffs sued to redeem and recover the property. The trial Court held that the purchase by the defendant mortgagee was valid until it was set aside and not having been set aside in execution proceedings was binding upon the plaintiffs. The lower Appellate Court reversed the decree holding that the mortgagee purchased the property without leave to bid and therefore the mortgagor could disregard the sale and redeem. On appeal to the High Court: *Held,* reversing the decree, that the disregard of the statutory provision that leave to bid should be obtained by a judgment-creditor was a mere irregularity of practice, and was not a fundamental breach of trust which nullified the apparent effect of the Court-sale. GANESH NARAIN *v.* GOPAL VISHNU (1916)
I. L. R. 41 Bom. 357

MOSQUE.

See MOSQUE PROPERTY, SUIT FOR.

MOSQUE PROPERTY, SUIT FOR.

———— *Leave of Court—Civil Procedure Code (Act V of 1908) O. I., r. 8—Failure to obtain permission before institution of the suit—Its effect—Objection for want of such permission, if fatal to the suit.* There is no doubt that the proper course is to obtain permission under O.I, r. 8 before the suit is instituted, but there is nothing in the rule to show that if it is not so done, it cannot be granted afterwards. The mere fact that the leave of the Court was not obtained before the institution of the suit should not result in the dismissal of the suit. Permission under O. I, r. 8 can be granted subseqent to the filing of the suit. The objection under s. 30 of the old Civil Procedure Code which corresponds with O. I, r. 8 of the present Code, is not one affecting the jurisdiction of the Court. *Fernandez* v. *Rodrigues, I. L. R. 21 Bom. 784, Chennu Menon* v. *Krishnan, I. L. R. 25 Mad. 399, Srinivasa Chariar* v. *Raghava Chariar, I. L. R. 23 Mad. 28, Baldeo Bharthi* v. *Bir Gir, I. L. R. 22 All. 269,* followed. *Jan. Ali* v. *Ram Nath Mundul, I. L. R. 8 Calc. 32, Lutifunnissa Bibi* v. *Nazirun Bibi, I. L. R. 11 Calc. 33,* referred to. *Oriental Bank Corporation*

MOSQUE PROPERTY, SUIT FOR—*concld*

v *Gobind Lall, I L R 9 Calc 604*, dissented from *Dhunput Singh* v *Paresh Nath Singh, I L R 21 Calc 180*, distinguished AHMED ALI v ABDUL MAJID (1916)
I. L. R. 44 Calc. 258

MUAFI GRANT.

See AGRA TENANCY ACT (II OF 1901), s 158 **I. L. R 39 All. 689**

MUNICIPAL BYE-LAWS.

See UNITED PROVINCES MUNICIPALITIES ACT (II OF 1916) ss 209, 210
I L. R. 39 All. 386

MUNICIPAL OFFENCE.

——— prosecution for—

See UNITED PROVINCES MUNICIPALITIES ACT (II OF 1916), ss 185, 186
I L R. 39 All 482

MUNICIPALITY.

See BOMBAY MUNICIPAL ACT (BOM III OF 1888), s 349 B
I L R. 41 Bom. 741

See BOMBAY MUNICIPAL ACT (BOM III OF 1888), ss 418 461, CL (*o*)
I. L R. 41 Bom. 580

See PUBLIC DRAIN
I. L R. 44 Calc. 689

See RAILWAYS ACT (IX OF 1890 AS AMENDED BY ACT IX OF 1896), s 7
I. L. R. 41 Bom 291

MURDER

See PENAL CODE (ACT XLV OF 1860)' ss 299, 301 **I L R. 39 All. 161**

See PENAL CODE (ACT XLV OF 1860), *s 300, CL (3)*
I. L. R. 41 Bom. 27

MUTAWALLI.

——— appointment of a minor as—

See ELECTION **I L. R. 40 Mad 941**

MUTT, HEAD OF.

——— *Dharmapuram Adhinam, Pandarasannadhi of—Junior Pandarasannadhi—Mode of appointment of—Nomination by will—Ordination—Abishegam, effect of—Nature of the office—Removal of junior from office, grounds of—Power of Pandarasannadhi to remove junior, if at pleasure or for good cause—Notice of charges, necessity for—Dismissal without notice or opportunity for defence, validity of—Compromise decree, nature and effect of—Suit for setting aside, necessity for—Limitation for such suit—Compromise decree partly illegal, effect of—Decree, if void altogether* The Pandarasannadhi or the head of the Dharmapuram mutt, has no power to dismiss at his pleasure the junior Pandarasannadhi of the mutt from his office though he can do so for good cause, but a dismissal, directed by the former without giving the latter any notice of the charges alleged against him or an opportunity for making his defence thereto, is wholly void and inoperative in law The nomination and ordination of a junior Pandarasannadhi is the customary mode of providing for the line of succession in mutts The position of a junior Pandarasannadhi during the lifetime of the senior is analogous to that of a co adjutor with the right of succession, under

MUTT, HEAD OF—*concld*

the Canon law, a right of which he cannot be deprived except for grave cause Where an office is held at pleasure the incumbent may be removed even on charges of misconduct without any opportunity of being heard in his defence because he is removable at pleasure without any misconduct at all, but in all other cases the objection of want of notice can never be got over *Rex* v *Chancellor and Master of the University to Cambridge*, 1 Str 557, followed A consent decree is binding on the parties and their representatives until it is set aside just as much as if it had been passed after contest *Fateh Chand* v *Narsing Das, 22 C L J 383*, and *In re South American and Mexican Company Ex parte Bank of England, [1895] 1 Ch 37*, followed A suit to set aside a compromise decree will be barred after three years from the date of the decree An illegality in a compromise decree in so far as it restrains the Pandarasannadhi from removing the junior *in case of any future misconduct* is not a ground for setting aside the decree altogether in a suit instituted for that purpose *Kearney* v *Whitehaven Colliery Co, [1893] 1 Q B 700*, referred to *Per* SESHAGIRI AYYAR, J Where a suit is brought in a representative capacity, the legal representative must show that the estate devolved on him, the estate in this connection is not the estate which the deceased had but the estate which he represented, that is, the estate which he laid claim to Mutts are not voluntary associations or brotherhoods or proprietary clubs A person who has been appointed as a junior Pandarasannadhi to whom *abishegam* has been duly performed, acquires a status which is not lost, unless he is removed from his office for good cause An ascetic who holds an office like that of a head of a mutt or a junior Pandarasannadhi does not incur a forfeiture of his office by reason of his immorality but is liable to be removed from his office on proof of his immoral conduct In a suit by a junior Pandarasannadhi against the head of a mutt disputing the validity of his dismissal from his office, it is competent to the head of the mutt to enter into a compromise which does not affect the usage of the institution whereby the senior Pandarasannadhi recognizes the title of the junior under his original appointment as subsisting and admits that his removal was invalid as the grounds of dismissal were not justifiable, a decree in accordance therewith is not illegal TIRUVAMBALA DESIKAR v MANIKKA VACHAKA DESIKAR (1915) **I. L R. 40 Mad. 177**

N

NATIVE INDIAN SUBJECT OF HIS MAJESTY.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s 188
I. L. R. 41 Bom. 667

NEGOTIABLE INSTRUMENT.

See NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881), s 22
I. L. R. 39 All. 86

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881).

——— **s. 22**—*Hundi payable after sixty-one days—Date of maturity—Liability of endorsee*

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881)—*concld.*

———— **s. 22**—*concld.*

Held, (i) that a bill of exchange which is not expressed to be payable on demand, at sight or on presentment, is at maturity on the third day after the day on which it is expressed to be payable, and (ii) that a hundi drawn in the customary form, that is, expressed to be payable after so many days, does not require to be presented for acceptance in order to render liable thereon the payees, who had endorsed it in favour of a third party. GANGA PRASAD *v.* HIRA LAL (1916)

I. L. R. 39 All. 86

———— **s. 27**—*Promissory note executed under the authority of a marksman but not marked by him, validity of—Contract Act (IX of 1872), s. 226, applicability of.* The law of Agency as stated in s. 226 of the Indian Contract Act is applicable to Negotiable Instruments and a promissory note executed by a person under the authority of a marksman is valid though the marksman has not affixed his mark thereto. BALAYYA *v.* SUBBAYYA (1917) . . . **I. L. R. 40 Mad. 1171**

———— **ss. 32, 43**—

See BILL OF EXCHANGE.

I. L. R. 41 Bom. 566

———— **ss. 64, 76**—*Hundi—Presentation—Liability of drawer—Burden of proof.* Where it is sought, with reference to s. 76 (*d*) of the Negotiable Instruments Act, 1881, to render liable the drawer of a *hundi* which has not been presented for payment, the *onus* of proving that the drawer could not suffer damage from the want of presentment is on the party who wants to excuse himself for the non-presentation of the *hundi, Madho Ram* v. *Durga Prasad, I. L. R. 33 All. 4,* followed. *Phul Chand* v. *Ganga Ghulam, I. L. R. 21 All. 450,* distinguished. GAYA DIN *v.* SRI RAM (1917).

I. L. R. 39 All. 364

NOMINATION OF JUNIOR OR SENIOR.

See BARRISTER . **I. L. R. 44 Calc. 741**

NON-OCCUPANCY RAIYAT.

1. ———— *Khamar land—Statute—Headings of Chapters—Bengal Tenancy Act (VIII of 1885), Ch. XI, s. 45 and Sch. III, Cl. 1 (a).* A tenant of a *khamar* land is not a non-occupancy *raiyat.* The heading of a chapter in a statute may be looked at for the purpose of interpreting a section in the statute. DWARKANATH CHAUDHURI *v.* TAFAZAR RAHAMAN SARKAR (1916)

I. L. R. 44 Calc. 267

2. ———— *Under registered lease, eviction of—"Jote," meaning of—"Mahal," meaning of.* That a non-occupancy *raiyat* who has been admitted to occupation of the land under a registered lease is liable to be ejected on the expiry of the term of his lease but it being found that the defendants were not admitted into occupation of the land by the *kabuliyats,* it was necessary to determine whether the defendant in each case was in occupation as tenant of the particular lands in respect of which he subsequently executed his *kabuliyat.* That the description in the *kabuliyat* "without right *jote mahal*" was not clear to show that the defendants admitted that the plaintiffs were *raiyats.* That the words "without right' standing alone might mean that the plaintiffs were owners of a non-occupancy *jote* but the word "*jote*" does not necessarily mean the interest of a cultivator and the word "*mahal*" is not used in connection with the interest of a *raiyat.* That the statement in the lease as to the purpose of the tenancy and the fact that the tenancy was treated all along by Government as non-occupancy *jote* were in favour of the plaintiffs but not conclusive against the defendants. RAJANI KANTHA MUKHERJEE *v.* YUSUF ALI (1916) . **21 C. W. N. 188**

NON-PERFORMANCE OF WORK.

See BARRISTER . **I. L. R. 44 Calc. 741**

NORTH-WESTERN PROVINCES ACTS.

See UNITED PROVINCES AND OUDH ACTS.

NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881).

———— *Sale of zamindari—Agreement to relinquish ex-proprietary right in sir lands—Void contract.* In 1899 one R. D., the widow of a Hindu who had died heavily in debt, sold most of her husband's property to his principal creditor D. S. By the terms of the sale deed the vendor agreed to file a relinquishment of her ex-proprietary rights in the sir lands and the vendee agreed to certify to the Civil Court full satisfaction of the claim under his decree. Nothing, however, was done to carry out this agreement until 1901, when D. S. executed a document in favour of R. D., in which was stated that the parties had come to an agreement, that R. D. was to file her relinquishment and in consideration thereof D. S. would file his certificate of satisfaction of his Civil Court decree, and further bound himself to pay to R. D. a monthly allowance of Rs. 5 for the rest of her life, which was to be a charge on the property transferred by the sale deed of 1899. *Held,* on suit by R. D. to recover arrears of her maintenance allowance from the transferees of the property which purported to have been charged with its payment, and from D. S. personally, that the arrangement between the parties was merely a device to get round the provisions of the Rent Law, and that the suit would not lie. *Moti Chand* v. *Ikraam-ullah Khan, I. L. R. 39 All. 173,* referred to. RATAN DEI *v.* DURGA SHANKAR BAJPAI (1917) . . **I. L. R. 39 All. 645**

———— **s. 9**—*Occupancy tenant—Usufructuary mortgage of holding—Relinquishment by mortgagor in favour of zamindar.* Where a mortgage with possession of an occupancy holding had been made by the tenant before the coming into force of the Agra Tenancy Act, 1901: *Held* that the tenant mortgagor could not defeat the rights of the mortgagees by surrendering the holding to the zamindar. CHHIDDU *v.* SHEO MANGAL SINGH (1916)

I. L. R. 39 All. 186

NOTICE.

See REASONABLE NOTICE.

See EJECTMENT . **I. L. R. 44 Calc. 272**

See LAND ACQUISITION ACT (I OF 1894), s. 9. . . **I. L. R. 39 All. 534**

See LOSS OF GOODS.

I. L. R. 44 Calc. 16

See RAILWAYS ACT (IX OF 1890), s. 77.

21 C. W. N. 751

See SCHOOL-MASTER.

I. L. R. 44 Calc. 917

NOTICE—*concl l*

See WITHDRAWAL OF SUIT
I. L. R. 44 Calc. 454

——— of charges, necessity for—
See MUTT . I. L. R. 40 Mad. 177

——— dismissal without, or opportunity for defence—
See MUTT I. L. R. 40 Mad. 177

——— through Collector—
See RAILWAY ADMINISTRATION.
I. L. R. 44 Calc. 16

NOTICE TO GOVERNMENT.
See LOSS OF GOODS
I. L. R 44 Calc 16

NOTICE TO QUIT.
See LANDLORD AND TENANT
I. L. R. 44 Calc. 403

NUMBERS.
See TRADE NAME, INFRINGEMENT OF
I. L. R. 41 Bom. 49

O

OBSTRUCTION.
See PUBLIC PATHWAY
I. L. R. 44 Calc. 61

OCCUPANCY.
See LAND REVENUE CODE (BOM V OF 1879), s 74 I. L. R. 41 Bom. 170

OCCUPANCY HOLDING.
See MORTGAGE. I. L. R. 39 All. 539

See NORTH WESTERN PROVINCES RENT ACT (XII OF 1881), s 9
I. L. R. 39 All. 186

See PROVINCIAL INSOLVENCY ACT (III OF 1907), ss 16, 36, 43
I. L. R. 39 All. 120

1. ——— *Non transferable occupancy holding—Under raiyat—Whether fresh settlement holder required to serve notice on under-raiyat after ejectment of transferee by landlord—Notice—Bengal Tenancy Act (VIII of 1885), s 49, cl (b)* Where a person has obtained settlement of a holding from the superior landlord after the latter had ejected the transferee of the occupancy raiyat from the said holding as it was not transferable, he is not required to serve a notice to quit on the under raiyat under s 49 of the Bengal Tenancy Act in his suit for ejectment *Nilkanta Chaki* v *Ghatoo Sheikh, 4 C. W. N. 667,* and *Badan* v. *Rajeswari, 2 C L J. 570,* followed. *Lal Mahomed Sarkar* v *Jagir Sheikh, 13 C W. N. 913, Amirullah Mahomed* v *Nazir Mahomed, I L R 31 Calc 932, Amirullah Mahomed* v *Nazir Mahomed, I. L R 34 Calc 101,* and *Raghunath Singh* v *William Cox, 19 C W. N. 268,* distinguished JADAB SARDAR v GOBINDA CHANDRA MANDAL (1916) . I. L. R 44 Calc. 272

2 ——— *Occupancy holding held under joint family, not transferable without landlord's consent—Power of karta to recognise transfer* The *karta* of a joint Hindu family has authority to consent on behalf of the joint family

OCCUPANCY HOLDING—*concl l.*

to the transfer of an occupancy holding held by the tenants under the joint family as landlords and not transferable without their consent duly given by themselves or on their behalf GOLAPDI MEAH v PURNO CHANDRA DUTTA (1917) . . . 21 C. W. N. 774

3 — [illegible]
Attachn [illegible]
lords [illegible]
part of [illegible]

charge voluntarily made by the raiyat *Badrannessa Choudhrani* v *Alam Gazi, 19 C W. N. 814,* [illegible]

OFFERINGS.

——— permanent alienation of—
See CIVIL PROCEDURE CODE (ACT V OF 1908), s 92 . I. L. R. 40 Mad. 212

OFFICIAL ASSIGNEE.

——— prospect of litigation with—
See INSOLVENCY . I. L. R 44 Calc. 374

OFFICIAL RECEIVER.

——— whether a Court—
See PROVINCIAL INSOLVENCY ACT (III OF 1907), ss (2) (c) AND (g), 22, 46, 52.
I. L. R. 40 Mad. 752

ONUS OF PROOF.
See BURDEN OF PROOF.

ORAL EVIDENCE.
See EVIDENCE ACT (I OF 1872), s 91
I. L. R. 41 Bom. 466

ORDINANCE.
See HABEAS CORPUS
I. L. R. 44 Calc. 459

——— 1914—VI.
See COMMERCIAL INTERCOURSE WITH ENEMIES ORDINANCE.

OUDH ACT (XXII OF 1886).

——— *Civil and Revenue Courts, respective jurisdictions of, in zamindar's suit against holders of land—Suit for ejectment in Revenue Court—Defence that defendant proprietor or under proprietor—Zamindar's suit for declaration* [illegible]

special or other terms upon which [illegible] holds, and the Civil Courts have [illegible] jurisdiction to decide whether [illegible] possession of lands holds a [illegible] proprietary right in the lan[illegible] ther the person in [illegible]

OUDH ACT (XXII OF 1886)—*concld.*

under-proprietary right when raised and persisted in the Revenue Court cannot be finally decided in that Court and the only remedy of the zamindar is a suit in the Civil Court for a declaration that the defendant has no such right, and when in such a suit the latter fails to prove such a right, the Court cannot refuse to make such a declaration. ABUL HUSAN *v.* PRAG (1916) **21 C. W. N. 582**

OWNER.

———— **rights of**—

See PUBLIC DRAIN. **I. L. R. 44 Calc. 689**

P

PANCHAYAT.

See LIBEL . . **I. L. R. 39 All. 561**

PANDARASANNADHI.

See MUTT . **I. L. R. 40 Mad. 177**

PAPER CURRENCY ACT (II OF 1910).

———— s. 26—*Promissory note payable to a person or order or bearer, legality of—Right of suit on the note.* A promissory note payable to a person or order or bearer is illegal and void under s. 26 of the (Indian) Paper Currency Act (II of 1910) and a bearer cannot be given any decree for money in a suit on such a note. *Jetha Parkha* v. *Ramachandra Vithoba, I. L. R. 16 Bom. 689,* referred to. *Obiter :* If there is an obligation apart from the one under the note it may be enforced and the fact that the loan and the note are contemporaneous is not conclusive of the non-existence of such an obligation. *Shanmuganatha Chettiar* v. *Srinivasa Ayyar, 4 M. L. W. 27,* and *31 Mad. L. J. 138,* referred to. CHIDAMBARAM CHETTIAR *v.* AYYASAWMI THEVAN, (1916) . . . . **I. L. R. 40 Mad. 585**

PARDANASHIN LADY.

———— *Plea that promisor was not raised—Decree for specific performance—Court, if bound to raise the plea.* In a suit for specific performance of a contract of sale by the widow of a deceased Hindu and his executor, there were no pleas taken in defence either that the price agreed upon was inadequate or that one of the promisors was a *pardanashin* lady and no issue was raised or tried, on either of these points: *Held,* that neither of these points could be allowed to be raised by them on appeal. The High Court having reversed the decision of the Subordinate Judge on an issue as to payment by the purchaser of a sum of Rs. 1,500 to the vendors. *Held,* on the evidence, that the decision of the Subrordinate Judge was correct and should be restored. NAROTTAM DAS *v.* KEDAR NATH SAMANTA (1916) **21 C. W. N. 665**

PARDON.

See CRIMINAL PROCEDURE CODE, s. 339. **I. L. R. 39 All. 306**

PARTIES.

See CIVIL PROCEDURE CODE, 1908, O. IX, R. 13 . . **I. L. R. 39 All. 13**

See CONTRACT ACT (IX OF 1872), s. 23. **I. L. R. 39 All. 51, 58**

See PARTITION SUIT. **I. L. R. 44 Calc. 28**

PARTIES—*concld.*

See PROVINCIAL INSOLVENCY ACT (III OF 1907), ss. 22, 46. **I. L. R. 39 All. 152**

———— **exonerated defendant**—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 47, O. XXI, RR. 100, 101. **I. L. R. 40 Mad. 964**

———— **power of Court to add**—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 92 . **I. L. R. 40 Mad. 110**

———— **substitution of**—

See LIMITATION . **L. R. 44 I. A. 218**

———— **to conveyance**—

See EVIDENCE . **L. R. 44 I. A. 236**

PARTITION.

See HINDU LAW—PARTITION.

See EVIDENCE ACT (I OF 1872), s. 91. **I. L. R. 41 Bom. 466**

See PARTITION ACT (IV OF 1893), s. 4. **I. L. R. 39 All. 672**

See PARTITION AND POSSESSION.

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), s. 118. **I. L. R. 39 All. 707**

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), s. 233(*k*). **I. L. R. 39 All. 469**

———— **between an adopted son and an aurasa son of a Sudra**—

See HINDU LAW—PARTITION. **I. L. R. 40 Mad. 632**

———— *Suit for partition of rights of management of a temple—Joint Hindu family.* *Held,* that no suit will lie by a member of a joint Hindu family for partition of the right of management and superintendence of worship in a temple, such right, being in respect of property with regard to which none of the parties claim to have any personal pecuniary interest. *Sri Ram Lalji Maharaj* v. *Sri Gopal Lalji Maharaj, I. L. R. 19 All. 428,* and *Ramanathan Chetty* v. *Murugappa Chetty, I. L. R. 27 Mad. 192,* and, in appeal, *I. L. R. 29 Mad. 283,* referred to. PURAN MAL *v.* BIRJ LAL (1917) . . **I. L. R. 39 All. 651**

PARTITION ACT (IV OF 1893).

———— s. 4—*Suit for partition—Undertaking by defendants to purchase plaintiff's share in the subject matter of the suit.* Where the defendant to a suit for partition by metes and bounds has definitely undertaken, according to the provisions of s. 4 of the Partition Act, 1893, to purchase the share of the plaintiff in the property sought to be partitioned, he cannot be permitted to resile from his undertaking, and the court is bound to direct a sale. ILIAS AHMAD *v.* BULAQI CHAND (1917) **I. L. R. 39 All. 672**

PARTITION AND POSSESSION.

———— **suit for**—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. I, R. 3. **I. L. R. 40 Mad. 365**

PENAL CODE (ACT XLV OF 1860)—*contd.*

——— **s. 211**—*concld.*

Gowd v. *Emperor, I. L. R. 31 Mad. 506,* and *Zorawar Singh* v. *King-Emperor, 11 All. L. J. 1106,* followed. The following statement was made to a police officer :—"I find there has been a theft: I suspect the persons named and I want an inquiry to be made." *Held,* that if the statement was false, the offence committed fell under s. 182 of the Indian Penal Code and not under s. 211. EMPEROR *v.* MATHURA PRASAD (1917) . **I. L. R. 39 All. 715**

——— **ss. 211, 500**—

See SANCTION FOR PROSECUTION.

I. L. R. 44 Calc. 970

——— **s. 216**—*Harbouring an offender—"Assistance" coming within meaning of the section, nature of.* To the knowledge of the petitioner warrants for the arrest of the petitioner's brother and a proclamation under s. 87, Criminal Procedure Code, were issued, the proclamation being duly published at the house in which the two brothers as joint owners used to reside. On information received the police interviewed the petitioner at his house and in answer to enquiries he replied that his brother was in the house and promised to produce him. He then went inside the house and after some delay returned with his brother's son and said that he had made a mistake and that it was the son who had come to the house the preceding evening. On search the petitioner's brother was found hiding in the house. The petitioner was convicted under s. 216, Indian Penal Code. *Held,* that the petitioner was rightly convicted. The ways in which assistance may be rendered need not for the purposes of s. 216 be restricted to methods which may properly be regarded as *ejusdem generis* or of a like nature with supplies of food or of other necessary articles. MUCHI MIAN *v.* EMPEROR (1917)

21 C. W. N. 1062

——— **ss. 225, 332**—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 54.

I. L. R. 40 Mad. 1028

——— **ss. 299, 301**—*Murder—Intention to kill one person, but death of another actually caused.* Where a person intending to kill one person kills another person by mistake, he is as much guilty of murder as if he had killed the person whom he intended to kill. *Public Prosecutor* v. *Mushunooru Suryanarayana Moorty, 13 Indian Cases 833,* and *Agnes Gore's Case, 77 English Rep. 853,* referred to. EMPEROR *v.* JEOLI (1916) . **I. L. R. 39 All. 161**

——— **s. 300, cl. (3)**—*Causing death—Single blow by an iron-shod stick—Culpable homicide not amounting to murder.* The accused and the deceased having quarrelled, the accused took an iron-shod stick, and struck one blow on the head of the deceased which caused his death. The accused having been convicted of murder, appealed to the High Court. *Held,* that the offence committed by the accused was not murder but culpable homicide not amounting to murder, because it was possible that the blow he struck exceeded in violence the injury he had in view at the moment of striking it. EMPEROR *v.* SARDARKHAN (1916)

I. L. R. 41 Bom. 27

——— **s. 317**—*Exposure or abandonment of a child by a person having care of it—Person entrusted with a child for abandoning it has the care of it.* Accused No. 1 having given birth to an illegitimate child gave it to her sister, accused No. 2, with a view to dispose of it secretly. Accused No. 2 accordingly carried it by a railway train and abandoned it in a second class compartment. On these facts, accused No. 2 was charged with an offence under s. 317 of the Indian Penal Code; and accused No. 1 with having abetted the offence under ss. 317 and 109 of the Code. The Sessions Judge acquitted them both, the accused No. 2 on the ground that she had not the care of the child, and accused No. 1 on the ground that as no principal offence had been committed she would not be guilty of abetment. The Government having appealed: *Held,* reversing the order of acquittal, that both the accused had committed the offences with which they had been charged. EMPEROR *v.* CRIPPS (1916)

I. L. R. 41 Bom. 152

——— **ss. 379, 447**—

See THEFT . . **I. L. R. 44 Calc. 66**

——— **s. 420**—

See EVIDENCE ACT (I OF 1872), ss. 11, 14, 15 . . **I. L. R. 39 All. 273**

——— **s. 441**—*Criminal trespass—Building on another man's land.* A man may be guilty of criminal trespass on the land of another without ever personally setting foot on the land, if, for example, he causes others to build on the land against the wishes and in spite of the protest of the owner of the land. EMPEROR *v.* GHASI (1917)

I. L. R. 39 All. 722

——— **ss. 456, 457, 380**—

See LURKING HOUSE-TRESPASS.

I. L. R. 44 Calc. 358

——— **ss. 478, 482**—*"Trademark"—Importer using a distinctive mark has property in it as against the rest of the world.* A distinctive mark may be adopted by a person who is not the manufacturer but the importer of goods, and he will acquire the property in that mark as indicating that all goods which bear it have been imported by him. *Ralli* v. *Fleming, I. L. R. 3 Calc. 417,* and *Lavergne* v. *Hooper, I. L. R. 8 Mad. 149,* referred to. In this case merchants, selectors and importers of hand-made sugar, used a distinctive mark denoting that the sugar contained in the bags so marked had been selected and imported by them, and their customers accepted the mark as a guarantee that the sugar was hand-made. *Held,* that the mark so used was a "trade-mark" as defined in s. 478 of the Indian Penal Code. EMPEROR *v.* LATIF (1916) **I. L. R. 39 All. 123**

——— **s. 504**—*Insult intended to provoke breach of the peace—Necessary elements constituting offence—S. 95, act causing harm so slight that no person of ordinary sense and temper would complain of such harm.* A Deputy Magistrate went to a locality to enquire into a petition made by the residents for funds to enable them to dig a well and in the course of a discussion with the people assembled the Deputy Magistrate remarked that as some of the residents were well-to-do, they must make the well themselves, whereupon the accused who were present there said to the Deputy Magistrate. "Then why do you make an enquiry, go away quietly." The accused were convicted under s. 504, Indian Penal Code: *Held,* that the ingre-

PENAL CODE (ACT XLV OF 1860)—*concld*

——— s. 504—*concld.*

dients essential for a conviction under s. 504 are threefold, *first*, intentional insult, *secondly*, provocation therefrom, and *thirdly*, intention that such provocation should cause or knowledge that such provocation was likely to cause the person so insulted to break the public peace or to commit any other offence. *Held*, on a consideration of the circumstances of the case that it was completely covered by the salutary provisions of s. 95, Indian Penal Code JOY KRISHNA SAMANTA v KING-EMPEROR (1916) . . 21 C. W. N. 95

PENAL STATUTES.

——— generally not retrospective—

See TRADING WITH THE ENEMY
I. L R. 40 Mad. 34

PENALTY.

See THEATRICAL PERFORMANCE
I. L. R. 44 Calc. 1025

——— *Interest, exorbitant rate of—Inference by Court—Court's power to reduce rate of interest—Mortgage—Release of one joint mortgagor, effect of—Contract Act (IX of 1872), ss 44, 74* It is competent to a Court to grant relief whenever the stipulation for payment of interest at a specified rate appears to the Court to be a stipulation by way of penalty What constitutes a stipulation by way of penalty must be determined in each individual case upon its own special circumstances. *Webster* v *Bosanquet, [1912] A C 394, Khagaram Das* v *Ramsankar Das Pramanik, I L R 42 Calc. 652, Bouuang Raja Chilla phroo Chowdhuri* v *Banga Behari Sen, 20 C W N 408, Abdul Majeed* v *Khirode Chandra Pal, I L R 42 Calc 690*, and *Gopeshwar Saha* v *Jadav Chandra Chanda, I L R 43 Calc 632*, referred to *Per* SANDERSON, C J The release of one of several joint mortgagors with no express reservation of the mortgagee's remedy against the other mortgagors, does not *ipso facto* release the other mortgagors. KRISHNA CHARAN BARMAN *v* SANAT KUMAR DAS (1916)
I. L. R. 44 Calc. 162

PENSIONS ACT (XXIII OF 1871).

——— s. 4—

See SARANJAM . I. L. R. 41 Bom. 408

PERMANENT HEREDITARY TENURE.

See MINERALS, RIGHTS OF GRANTEE TO
I. L. R. 44 Calc. 585

PERMANENT LEASE.

——— power of head of mutt to grant—

See HINDU LAW—ENDOWMENT
I L. R. 40 Mad. 745

PERMANENT SETTLEMENT.

See IRRIGATION CESS ACT (MAD ACT VII OF 1865), s 1 AND PROS 1, 2
I. L. R. 40 Mad. 886

See MADRAS IRRIGATION CESS.
L. R. 44 I. A. 166

PERMANENT SETTLEMENT, 1793.

See CHAUKIDARI CHAKARAN LANDS.
I. L. R. 44 Calc. 841

PETITION.

——— delay in filing—

See DIVORCE ACT (IV OF 1869), s 14
I. L. R. 41 Bom. 36

PLAINT.

——— amendment of—

See COURT FEE . I. L. R. 44 Calc. 352

——— authority to file—

See PRACTICE . I. L. R. 39 All. 343

——— rejection of—

See COURT FEE . I. L. R. 44 Calc. 352

See JUDICIAL OFFICERS' PROTECTION ACT (XVIII OF 1850), s 1
I. L. R. 39 All. 516

PLAINTIFFS.

——— death of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s 92 I. L. R. 40 Mad. 110

PLEADER.

——— *Admission of women as pleaders—Disqualification—Constant Tradition—Regulation of 1781 for the Administration of Justice—Regulation VII of 1793 (Vakils), Preamble—Regulation XV[illegible] 5, 10 to 14, 1[illegible] tioners Act (I[illegible] Provinces Act [illegible] Act (XX of [illegible] 1857)—Pena[illegible] Act (X of 18[illegible]) [illegible] Act (XI of 1865), s 1—Pleaders, Mukhtears and Revenue Agents Act (XX of 1865), ss 2, 5, Sch II—The Punjab Chief Courts Act (XXIII of 1865), s 1—Pleaders, Mukhtears and Revenue Agents Act (XXIII of 1865), s 1—Pleaders Amending Act (XXIX of 1865)—General Clauses Act (I of 1868), s 2 (2)—Legal Practitioners Act (XVIII of 1879), s 6, High Court Rules thereunder—General Clauses Act (X of 1897), s 13* As the law now stands, [illegible] are not entitled to be enrolled as pleaders [illegible] The [illegible] in the [illegible] Legislature, [illegible] introduce a [illegible] lished principles of law [illegible] change of such a policy is desirable, the proper remedy is legislation and not an alteration of the law in the disguise of judicial exposition of the existing law Case law on the subject referred to *Per* CHITTY, J In framing rules under an Act of the Legislature, the Court should not use any particular expression or word in a different sense to that applied to the particular expression or word by the Act itself. But it is doubtful whether the General Clauses Act applies to rules framed by the High Court under the Legal Practitioners Act, 1879. REGINA GUHA, *In re* (1916).
I. L. R. 44 Calc. 290

PLEADERS, MUKHTEARS AND REVENUE AGENTS ACT (XX OF 1865).

See PLEADER . I. L. R. 44 Calc. 290

PENAL CODE (ACT XLV OF 1860)—*contd.*

—————— s. 211—*concld.*

youd v. *Emperor, I. L. R. 31 Mad. 506*, and *Zoravar Singh* v. *King-Emperor, 11 All. L. J. 1106*, followed. The following statement was made to a police officer :—" I find there has been a theft : I suspect the persons named and I want an inquiry to be made." *Held*, that if the statement was false, the offence committed fell under s. 182 of the Indian Penal Code and not under s. 211. EMPEROR v. MATHURA PRASAD (1917) . I. L. R. 39 All. 715

—————— ss. 211, 500—

See SANCTION FOR PROSECUTION.
I. L. R. 44 Calc. 970

—————— s. 216—*Harbouring an offender—"Assistance" coming within meaning of the section, nature of.* To the knowledge of the petitioner warrants for the arrest of the petitioner's brother and a proclamation under s. 87, Criminal Procedure Code, were issued, the proclamation being duly published at the house in which the two brothers as joint owners used to reside. On information received the police interviewed the petitioner at his house and in answer to enquiries he replied that his brother was in the house and promised to produce him. He then went inside the house and after some delay returned with his brother's son and said that he had made a mistake and that it was the son who had come to the house the preceding evening. On search the petitioner's brother was found hiding in the house. The petitioner was convicted under s. 216, Indian Penal Code. *Held*, that the petitioner was rightly convicted. The ways in which assistance may be rendered need not for the purposes of s. 216 be restricted to methods which may properly be regarded as *ejusdem generis* or of a like nature with supplies of food or of other necessary articles. MUCHI MIAN v. EMPEROR (1917) 21 C. W. N. 1062

—————— ss. 225, 332—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 54.
I. L. R. 40 Mad. 1028

—————— ss. 299, 301—*Murder—Intention to kill one person, but death of another actually caused.* Where a person intending to kill one person kills another person by mistake, he is as much guilty of murder as if he had killed the person whom he intended to kill. *Public Prosecutor* v. *Mushunooru Suryanarayana Moorty, 13 Indian Cases 833*, and *Agnes Gore's Case, 77 English Rep. 853*, referred to. EMPEROR v. JEOLI (1916) . I. L. R. 39 All. 161

—————— s. 300, cl. (3)—*Causing death—Single blow by an iron-shod stick—Culpable homicide not amounting to murder.* The accused and the deceased having quarrelled, the accused took an iron-shod stick, and struck one blow on the head of the deceased which caused his death. The accused having been convicted of murder, appealed to the High Court. *Held*, that the offence committed by the accused was not murder but culpable homicide not amounting to murder, because it was possible that the blow he struck exceeded in violence the injury he had in view at the moment of striking it. EMPEROR v. SARDARKHAN (1916)
I. L. R. 41 Bom. 27

—————— s. 317—*Exposure or abandonment of a child by a person having care of it—Person entrusted with a child for abandoning it has the care of it.* Accused No. 1 having given birth to an illegitimate child gave it to her sister, accused No. 2, with a view to dispose of it secretly. Accused No. 2 accordingly carried it by a railway train and abandoned it in a second class compartment. On these facts, accused No. 2 was charged with an offence under s. 317 of the Indian Penal Code; and accused No. 1 with having abetted the offence under ss. 317 and 109 of the Code. The Sessions Judge acquitted them both, the accused No. 2 on the ground that she had not the care of the child, and accused No. 1 on the ground that as no principal offence had been committed she would not be guilty of abetment. The Government having appealed: *Held*, reversing the order of acquittal, that both the accused had committed the offences with which they had been charged. EMPEROR v. CRIPPS (1916)
I. L. R. 41 Bom. 152

—————— ss. 379, 447—

See THEFT . . I. L. R. 44 Calc. 66

—————— s. 420—

See EVIDENCE ACT (I OF 1872), ss. 11, 14, 15 . . I. L. R. 39 All. 273

—————— s. 441—*Criminal trespass—Building on another man's land.* A man may be guilty of criminal trespass on the land of another without ever personally setting foot on the land, if, for example, he causes others to build on the land against the wishes and in spite of the protest of the owner of the land. EMPEROR v. GHASI (1917)
I. L. R. 39 All. 722

—————— ss. 456, 457, 380—

See LURKING HOUSE-TRESPASS.
I. L. R. 44 Calc. 358

—————— ss. 478, 482—"*Trademark*"—*Importer using a distinctive mark has property in it as against the rest of the world.* A distinctive mark may be adopted by a person who is not the manufacturer but the importer of goods, and he will acquire the property in that mark as indicating that all goods which bear it have been imported by him. *Ralli* v. *Fleming, I. L. R. 3 Calc. 417*, and *Lavergne* v. *Hooper, I. L. R. 8 Mad. 149*, referred to. In this case merchants, selectors and importers of hand-made sugar, used a distinctive mark denoting that the sugar contained in the bags so marked had been selected and imported by them, and their customers accepted the mark as a guarantee that the sugar was hand-made. *Held*, that the mark so used was a "trade-mark" as defined in s. 478 of the Indian Penal Code. EMPEROR v. LATIF (1916) I. L. R. 39 All. 123

—————— s. 504—*Insult intended to provoke breach of the peace—Necessary elements constituting offence—S. 95, act causing harm so slight that no person of ordinary sense and temper would complain of such harm.* A Deputy Magistrate went to a locality to enquire into a petition made by the residents for funds to enable them to dig a well and in the course of a discussion with the people assembled the Deputy Magistrate remarked that as some of the residents were well-to-do, they must make the well themselves, whereupon the accused who were present there said to the Deputy Magistrate. "Then why do you make an enquiry, go away quietly." The accused were convicted under s. 504, Indian Penal Code: *Held*, that the ingre-

PENAL CODE (ACT XLV OF 1860)—*concld*

——— **s. 504**—*concld.*

dients essential for a conviction under s 504 are threefold, *first*, intentional insult, *secondly*, provocation therefrom, and *thirdly*, intention that such provocation should cause or knowledge that such provocation was likely to cause the person so insulted to break the public peace or to commit any other offence. *Held*, on a consideration of the circumstances of the case that it was completely covered by the salutary provisions of s. 95, Indian Penal Code JOY KRISHNA SAMANTA *v* KING-EMPEROR (1916) . . 21 C. W. N. 95

PENAL STATUTES.

——— **generally not retrospective**—

See TRADING WITH THE ENEMY
I. L. R. 40 Mad. 34

PENALTY.

See THEATRICAL PERFORMANCE.
I. L. R. 44 Calc. 1025

——— *Interest, exorbitant rate of—Inference by Court—Court's power to reduce rate of interest—Mortgage—Release of one joint mortgagor, effect of—Contract Act (IX of 1872), ss 44, 74* It is competent to a Court to grant relief whenever the stipulation for payment of interest at a specified rate appears to the Court to be a stipulation by way of penalty What constitutes a stipulation by way of penalty must be determined in each individual case upon its own special circumstances. *Webster* v *Bosanquet*, [1912] *A C 394, Khagaram Das* v *Ramsankar Das Pramanik, I L R 42 Calc 652, Bouwang Raja Chella phroo Chowdhuri* v *Banga Behari Sen, 20 C W N 408, Abdul Majeed* v *Khirode Chandra Pal, I L R 42 Calc 690*, and *Gopeshuar*

against the other mortgagors, does not *ipso facto* release the other mortgagors. KRISHNA CHARAN BARMAN *v* SANAT KUMAR DAS (1916)
I. L. R. 44 Calc 162

PENSIONS ACT (XXIII OF 1871).

——— **s. 4**—

See SARANJAM . I. L. R 41 Bom 408

PERMANENT HEREDITARY TENURE.

See MINERALS, RIGHTS OF GRANTEE TO
I. L. R. 44 Calc. 585

PERMANENT LEASE.

——— **power of head of mutt to grant**—

See HINDU LAW—ENDOWMENT
I L. R. 40 Mad. 745

PERMANENT SETTLEMENT.

See IRRIGATION CESS ACT (MAD ACT VII OF 1865), S 1 AND PROS 1, 2
I. L. R. 40 Mad. 886

See MADRAS IRRIGATION CESS.
L. R. 44 I. A. 166

PERMANENT SETTLEMENT, 1793.

See CHAUKIDARI CHAKARAN LANDS.
I. L. R. 44 Calc. 841

PETITION.

——— **delay in filing**—

See DIVORCE ACT (IV OF 1869), s 14.
I. L. R. 41 Bom. 36

PLAINT.

——— **amendment of**—

See COURT FEE . I. L. R. 44 Calc. 352

——— **authority to file**—

See PRACTICE . I. L. R. 39 All. 343

——— **rejection of**—

See COURT FEE . I. L. R. 44 Calc. 352

See JUDICIAL OFFICERS' PROTECTION ACT (XVIII OF 1850), s 1
I. L R. 39 All. 516

PLAINTIFFS.

——— **death of**—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s 92 I. L. R. 40 Mad. 110

PLEADER.

——— *Admission of women as pleaders—Disqualification—Constant Tradition—Regulation of 1781 for the Administration of Justice—*

Act (X of 1865), s 3—Mofussil Small Cause Courts Act (XI of 1865), s 1—Pleaders, Mukhtears and Revenue Agents Act (XX of 1865), ss 2, 5, Sch II—The Punjab Chief Courts Act (XXIII of 1865), s 1—Pleaders, Mukhtears and Revenue Agents Act (XXIII of 1865), s 1—Pleaders Amending Act (XXIX of 1865)—General Clauses Act (I of 1868), s 2 (2)—Legal Practitioners Act (XVIII of 1879), s 6, High Court Rules thereunder—General Clauses Act (X of 1897), s 13 As the law now stands,

tion of the Legal Practitioners Act, 1879, and are not *ultra vires* *Per* MOOKERJEE, *J* It is improper to give an extended construction of a statute, in the absence of an intention on the part of the Legislature, to reverse the established policy or to introduce a fundamental change in long established principles of law Where it appears that a change of such a policy is desirable, the proper

I. L. R. 44 Calc. 290

PLEADERS, MUKHTEARS AND REVENUE AGENTS ACT (XX OF 1865).

See PLEADER . I. L. R. 44 Calc. 290

PLEADERS OF LOWER PROVINCES ACT (XVIII OF 1852).

See PLEADER . **I. L. R. 44 Calc. 290**

PLEADINGS.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. VIII, RR. 3, 4, 5.
I. L. R. 41 Bom. 89

POLICE.

———— powers of—

See POLICE ACT (V OF 1861), ss. 31, 32.
I. L. R. 39 All. 131

POLICE ACT (V OF 1861).

———— ss. 31, 32—*Jatrawals—Competence of police to issue general order for the control of the business of Jatrawals. Held*, that it is not competent to a Superintendent of Police to issue a general order forbidding persons of a certain class to frequent certain specified places without having first obtained a licence. EMPEROR *v.* KRISHNA LAL (1916) . . **I. L. R. 39 All. 131**

POLICE ACT (BOM. IV OF 1890).

———— ss. 63 (b), 80 (3)—

See BOMBAY DISTRICT POLICE ACT (BOM. ACT IV OF 1890), ss. 63(*b*), 80(*3*).
I. L. R. 41 Bom. 737

POLICE DIARY.

See PRIVY COUNCIL, PRACTICE OF.
I. L. R. 44 Calc. 876

POLICE OFFICER.

———— duties of—

See HABEAS CORPUS.
I. L. R. 44 Calc. 76.

POSSESSION.

See CONSCIOUS POSSESSION.

See COUNTERFEIT COIN.
I. L. R. 44 Calc. 477

———— change of—

See PRE-EMPTION.
I. L. R. 44 Calc. 675

———— delivery of, in execution—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 47, O. XXI, RR. 100, 101.
I. L. R. 40 Mad. 964

1. ———— *Of land suit for recovery of, by purchaser at sale—Defendant, if can set up occupancy right after suffering it by conduct to merge in tenure right.* The plaintiffs brought a suit in 1909 to recover possession of land purchased at a sale in execution of a decree in 1893. After the sale the land remained vacant for ten years from 1895 and the defendants took possession in 1905. The plaintiffs' case was that the defendants were in occupation after the sale without any right or title; the defence was that the plaintiffs purchased their right as tenure-holders only and the defendants had also the occupancy right: *Held*, the defendants not having kept alive and distinct the two interests which they possessed but having by conduct treated the occupancy right as no longer existent, could not turn round and set up the latter right to the detriment of the execution purchaser. That the plaintiffs' cause of action dated back to 1905 when the defendants took possession and the suit was not barred by limitation. PROMOTHA NATH ROY *v.* KISHORE LAL SHAHA (1916) . . . . **21 C. W. N. 304**

POSSESSION—*concld.*

2. ———— *Suit for recovery of, judgment of reversal by Appellate Court on ground of limitation, necessary findings in—Entry in record-of-rights, presumption of possession arising from—Onus on defendant to prove plaintiffs' dispossession—Judgment of Criminal Court in proceeding under s. 145, Cr. P. C., evidentiary value of—Statement of witnesses examined before Criminal Court but not in the suit, if admissible—Previous statements in the Criminal Court of witnesses examined in the suit, proper use of—Decision of Appellate Court as to admissibility of a document solely on opinion of the Criminal Court in s. 145 proceeding, propriety of.* The plaintiff sued for declaration of his title and recovery of possession. In a record-of rights published in 1896 the plaintiff was recorded as an occupancy raiyat of the land in suit. By an order of the Magistrate under s. 145, Cr. P. C., dated the 27th September 1909, the defendants were declared to be in possession thereof. The plaintiff's case was that he was dispossessed on the 12th December 1909. The suit was brought on the 19th March 1910. The Munsif decreed the plaintiff's suit finding that he had been in possession within 12 years of the date of the suit. The District Judge in appeal without finding the date of the plaintiff's dispossession held that the suit was barred by limitation: *Held*, that it was necessary for the District Judge to find when the plaintiff was dispossessed. He must also clearly find under what law the plaintiff's suit was barred and whether the facts necessary for applying that law have been established. That in a suit for ejectment the plaintiff has to prove his possession within the statutory period but in the present case the record-of-rights raised a presumption in the plaintiff's favour and shifted the onus on the defendants to establish affirmatively that the plaintiff has been out of possession for more than the statutory period. That although the judgment of the Criminal Court in the case under s. 145, Cr. P. C., was evidence of possession, the statements of witnesses who were not examined in the present suit were wholly inadmissible. That if it was sought to use the previous statements of such witnesses as were examined in the present suit, then those statements must first be put to the witnesses and duly proved before they could be treated as evidence. BARKAT ALI *v.* BASANT NUNIA (1915).
21 C. W. N. 175

POWER-OF-ATTORNEY.

———— *Construction—Whether special or general—Agent's authorisation extending to all acts for one particular purpose—Civil Procedure Code (Act V of 1908), O. III, r. 2 (a), High Court Rule III under s. 122 of the Civil Procedure Code (Act V of 1908).* A power-of-attorney was issued in plaintiff's favour in the following terms: "Accordingly, I have become owner of the said mortgage bond. Out of the principal and interest due to me in respect of the said mortgage bond, nothing has been paid to me. As the time in respect of it is about to expire, and it is necessary for me to go to my native place, I have constituted and appointed the abovenamed person my true and lawful attorney in this matter to recover all moneys due to me in respect of the principal and interest of the aforesaid mortgage bond by suing on my behalf in a civil Court or by coming to an amicable settlement, and to pass receipts for me, and on my behalf to sue

POWER OF ATTORNEY—*concld.*

and to receive process, and to do all such acts in this one matter as I, if present, would have done or could have done or would have been [illegible]

[illegible] within the meaning of R. 111 of the rules made by the High Court under s. 122 of the Civil Procedure Code, 1908, or a special power of attorney: *Held*, [illegible] attorne [illegible] extend [illegible] ment, [illegible] sary acts [illegible] purpose *Charles Palmer* v. *Sorabji Jamshedji*, *(1886) P. J. 63*, applied. *Venkataramana Iyer* v. *Narasinga Rao, I. L. R. 38 Mad. 134*, not followed. VARDAJI KASTURJI v. CHANDRAPPA (1916) . . . . **I. L. R. 41 Bom. 40**

PRACTICE.

See ACQUITTAL.
I. L. R. 44 Calc. 703

See ADMINISTRATION SUIT.
I. L. R. 44 Calc. 890

See BARRISTER **I. L. R. 44 Calc. 741**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. VIII, RR. 3, 4, 5.
I. L. R. 41 Bom. 89

See COMPANIES ACT (VII OF 1913), s. 38.
I. L. R. 41 Bom. 76

See CRIMINAL PROCEDURE CODE, s. 476.
I. L. R. 39 All. 367

See DECREE . **I. L. R. 44 Calc. 627**

See EXECUTION OF DECREE
I. L. R. 44 Calc. 1072

See HABEAS CORPUS.
I. L. R. 44 Calc. 76

See INSOLVENCY **I. L. R. 44 Calc. 280**

See JURY, TRIAL BY.
I. L. R. 44 Calc. 723

See LOCAL INVESTIGATION.
I. L. R. 44 Calc. 711

See SANCTION FOR PROSECUTION.
I. L. R. 44 Calc. 810

See WIFE'S COSTS.
I. L. R. 44 Calc. 35

See WITHDRAWAL OF SUIT.
I. L. R. 44 Calc. 454

1.——————————*Partition suit—Parties—Review—Civil Procedure Code (Act V of 1908), s. 152, O. XLVII, r. 1.—Partition of undivided share—Fraudulent representation* Where the mortgagees of the plaintiff's share in a partition suit applied (i) to be added as parties to the suit, and (ii) for revocation of an order made by another Judge directing a sale of the one fourth share of certain premises which is one of the properties to be partitioned in the suit on the ground that the conduct of the mortgagors and their attorneys was fraudulent and that the said order was made without jurisdiction: *Held*, that one Judge cannot set aside an order made by another Judge, even though the order be wrong. The remedy lies in review on the ground set out in O. XLVII, r. 1. *Sharup Chand Mala* v. *Pat*

PRACTICE—*concld.*

Dassee, I. L. R. 14 Calc. 627, *Jatra Mohun Sen* v. *Aukhil Chandra Chowdhury, I. L. R. 24 Calc. 334*, referred to. BASANTA KUMAR DASI v. KUSUM KUMARI DASI (1916) . **I. L. R. 44 Calc. 28**

2.——————————*Suit filed by an agent on behalf of an absent plaintiff—Objection raised as to authority of agent—Duty of Court in which plaint is presented.* In the case of a suit filed by an agent on behalf of an absent plaintiff, where the authority of the plaintiff to have a suit brought at all and to allow his name to be used as a plaintiff in the case, is seriously questioned, that is a matter of principle which it is a Court's duty to decide; and unless it is shown that the plaintiff has in fact authorized the suit, either expressly or impliedly, a Court ought not to grant a decree in his favour. But where authority has been given by the plaintiff in some form or another, and the question is whether the agent has complied with the rules as laid down in the Code of Civil Procedure, that is not a question of principle at all, but a question of practice and procedure. It is the first Court's business to see that the rules are complied with and it should not leave the investigation of that question to the Appellate Court But a suit should not be dismissed without the party who has failed to comply with the rules of procedure being given an opportunity of correcting the defect in procedure, if there be any RAMAN LALJI v. GOKUL NATHJI (1917)
I. L. R. 39 All. 343

PRE-EMPTION.

See MAHOMEDAN LAW—PRE EMPTION.

1 CUSTOM.

[illegible] is to put an end to the custom, [illegible] that the custom falls into abeyance. KAMRUN-NISSA BIBI v. SUGHRA BIBI (1917)
I. L. R. 39 All. 480

2. ——————————*Wajib ul arz—Custom—Property to be offered first to a co sharer.* In a pre emption suit, the custom being that a co sharer wishing to sell his property should first offer it to the other co sharers, if the vendor goes to the other co sharers and informs them of his desire to sell, [illegible] they decline to purchase on the ground that [illegible] other similar [illegible] without viola[illegible] If, however, a co sharer offers to purchase at a particular value the vendor ought not to sell to a stranger at a lower price SACHHAL SINGH v. RAM RATAN (1916) . **I. L. R. 39 All. 127**

2. FORMALITIES.

——————————*[illegible]*—*Talab-i-ishtishhad and [illegible]*

PRE-EMPTION—*contd.*

2. FORMALITIES—*concld.*

vance of both talabs *necessary. Held*, that the performance of the *talab-i-ishtishhad* is an indispensible preliminary to the enforcement of a right of pre-emption according to the Mahomedan Law. MUHAMMAD AHMAD SAID KHAN *v.* MADHO PRASAD (1916) . . . **I. L. R. 39 All. 133**

3. POSSESSION.

———————— *Decree for pre-emption —Purchaser's possession and right to rents and profits continues until full pre-emption price is paid—Civil Procedure Code, 1882; s. 214—Mahomedan law of pre-emption—Change of possession under decree.* If a claim to pre-emption be disputed, and a suit must be brought, the rights of the parties are regulated by s. 214 of the Code of Civil Procedure, which in this respect embodies the principle of the Mahomedan Law. That section enacts that "When the suit is to enforce a right of pre-emption in respect of a particular sale of property, and the Court finds for the plaintiff, if the amount of purchase-money has not been paid into Court, the decree shall specify a day on or before which it shall be so paid, and shall declare that on payment of such purchase-money, together with the costs (if any) decreed against him, the plaintiff shall obtain possession of the property, but that if such money and costs are not so paid the suit shall stand dismissed with costs." It is therefore only on payment of the purchase-money on the specified date that the plaintiff obtains possession of the property, and until that time the original vendee retains possession, and is entitled to the rents and profits. *Deokinandan* v. *Sri Ram, I. L. R. 12 All. 234*, approved. In the present case the decree under which possession was given to the pre-emptor (appellant) was made on 31st March, 1900 by the Subordinate Judge who found that the pre-emptive price was Rs. 37,000, and on payment of that sum the pre-emptor was put into possession. The High Court reversed that decree and dismissed the suit, but found that the price was Rs. 44,850 as stated in the deed of sale. On 2nd July, 1904, the original purchaser was put into possession. On 25th January 1908, the Privy Council set aside the decree of the High Court and restored that of the Subordinate Judge except as to the pre-emptive price which was fixed as being Rs. 44,850, and the additional sum making up that amount having been deposited, possession was again given to the pre-emptor on 19th January, 1909. In proceedings in which each party claimed mesne profits from the other, the original vendee from the pre-emptor from 1900 to 1904, and the pre-emptor from the vendee from 1904 to 1909: *Held*, that the possession of the vendee continued until 19th January, 1909; and the pre-emptor only obtained possession within the meaning of s. 214 of the Civil Procedure Code, 1882, on the date. No mesne profits thereafter were due to him, but he was liable to the vendee for mesne profits from 1900 to 1904 for which period he was in possession without title. DEONANDAN PRASHAD SINGH *v.* RAMDHARI CHOWDHRI (1916) **I. L. R. 44 Calc. 675**

4. RIGHT OF PRE-EMPTION.

———————— *Wajib-ul-arz—"Intiqal"—Mortgage by conditional sale—Cause of action.* The wajib-ul-arz of a village in recording an entry as to the right of pre-emption referred to transfers (*intiqal*) and provided for the mode in which the first offer was to be made: *Held*, that this provision applied to a mortgage by way of conditional sale and that the pre-emptor's cause of action arose upon the execution of the deed of mortgage and not when a foreclosure decree was passed or when the mortgagee obtained possession thereunder. SUBA SINGH *v.* MAHABIR SINGH (1917) . **I. L. R. 39 All. 544**

PREJUDICE.

See LURKING HOUSE-TRESPASS.
I. L. R. 44 Calc. 358

PRELIMINARY POINT.

See CIVIL PROCEDURE CODE (1908), O. XLI, R. 23. **I. L. R. 39 All. 165**

PREROGATIVES.

See HABEAS CORPUS.
I. L. R. 44 Calc. 459

PRESIDENCY SMALL CAUSE COURT.

———— **suit in—**

See SANCTION FOR PROSECUTION.
I. L. R. 44 Calc. 816

PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882).

———— **s. 38**—*Full Bench of the Small Causes Court, no power to decide facts. Held* by the Full Bench, that a Full Bench of the Presidency Small Cause Court, sitting under s. 38 of Act XV of 1882, has no jurisdiction to decide questions of fact whether they are raised generally or in consequence of its finding on another question of fact or law. *Sadasook Gambir Chund* v. *Kannayya, I. L. R. 19 Mad. 96* and *Srinivasa Charlu* v. *Balaji Rau, I. L. R. 21 Mad. 232*, approved. *Ramasamy Aiyar* v. *The Madras Times, Limited, 30 Mad. L. J. 207*, overruled. SAI SIKANDAR ROWTHER *v.* GHOUSEMOHIDIN MARAKAYAR (1916)
I. L. R. 40 Mad. 355

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909).

———— **ss. 7, 36 and 90—11 and 12 Vict., cap. 21, s. 26**—*Immoveable property situate outside local limits of ordinary original civil jurisdiction of High Court—Dispute as to title—Jurisdiction of High Court in insolvency to decide—Summary procedure, when—Letters Patent, cl. 12 and 18—Bankruptcy Act (46 & 47 Vict., cap. 52 of 1883), s. 102.* Under s. 7 of the Presidency Towns Insolvency Act (III of 1909), the High Court of Madras in the exercise of its insolvency jurisdiction, has jurisdiction to adjudicate on claims relating to immoveable property situate outside the limits of its ordinary original civil jurisdiction; the jurisdiction which existed under s. 26 of 11 & 12 Vict., cap. 21, has not been cut down by the Presidency Towns Insolvency Act. The jurisdiction conferred by s. 7 of the Act is of a discretionary character, and it is seldom that the Insolvency Court will deem it expedient to try difficult questions of title; the Judge in such cases would ordinarily ask the Official As-

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*concld*

——— s. 7—*concld*

signee in Insolvency to establish his title in an ordinary Civil Court S 36 of the Act does not control the language of s 7 but provides a special and summary procedure in certain cases, nor

Cl 12 of the Letters Patent does not control the provisions of cl 18 thereof so as to limit the insolvency jurisdiction of the Court *Ex parte Dickin, In re Pollard, L R 8 Ch D 377, 378, Ex parte Brown, In re Yates, L R 11 Ch D 148,* followed *Maule v Davis, In re Motion, L R 9 Ch App 192, 210, In re Lucas, I L R 42 Calc 109, Ganeshdas Panalal, In re R D Sethna v R S D, Chopra, I L R 32 Bom 198, Khan Sahib Banqi Abdul Kadhar Sahib v The Official Assignee, 11 Mad L T 51,* referred to ABDUL KHADER *v* THE OFFICIAL ASSIGNEE OF MADRAS (1916) **I. L. R. 40 Mad. 810**

——— ss. 14, 15, 21, 38—

See INSOLVENCY **I L. R 44 Calc. 899**

——— s 18 (3)—*Suit on a promissory note against an adjudged insolvent—Proceedings against an insolvent may be stayed, although not pending at the time of the order of adjudication—Proceedings against an insolvent stayed, although leave to sue was obtained under s 17—Discretion of the trial Court in staying proceedings not to be interfered with, where interference would involve abuse of judicial proceedings* The wording of s 18 (3) of the Presidency Towns Insolvency Act III of 1909 is wide enough to justify a stay of proceedings in an action which was not pending at the time of the order of adjudication S 10 of the English Bankruptcy Act, and *Brownscombe* v *Fair, 58 L T 85,* referred to MAHOMED HAJI ESSACK *v* ABDUL RAHIMAN (1916) **I. L. R. 41 Bom 312**

——— ss. 33 to 37, 43—

See INSOLVENCY **I. L. R. 44 Calc. 374**

——— s. 36—

See INSOLVENCY **I. L. R. 44 Calc. 286**

——— ss 53 (*1*), 108, 109—

See INSOLVENCY **I. L. R. 44 Calc. 1016**

PRESUMPTION.

See BENGAL TENANCY ACT (VIII OF 1885), s 5, CL. (*5*) **I. L. R. 44 Calc. 555**

PREVENTION OF CRUELTY TO ANIMALS ACT (XI OF 1890)

——— s. 3, cl. (b)—*Cruelty to animals—Cranes having their eyes sealed up—Carriage by railway in that condition* The accused purchased at Indore certain cranes (*saras*) which had their

to Animals Act, 1890 *Held,* that the accused had committed no offence under the section, for

PREVENTION OF CRUELTY TO ANIMALS ACT (XI OF 1890)—*concld*

——— s. 3—*concld.*

the cruelty, if any, was caused by the antecedent stitching up
or position in
train EMPE

I. L. R. 41 Bom. 654.

PREVIOUS CONVICTION.

See CRIMINAL PROCEDURE CODE s 413. **I. L. R. 39 All. 293.**

PREVIOUS CONVICTION, PROOF OF.

——— A finger mark expert was called as a witness who compared certain finger prints of the accused taken in Court with some other finger prints on a paper which contained a record of certain convictions which purported to be the convictions of the accused and pronounced them to be similar This was taken as proof of the previous convictions of the accused *Held,* that the previous convictions were not properly proved. RAM DAS SINGH *v* KING EMPEROR (1916) **21 C. W. N. 469**

PRINCIPAL AND AGENT.

See ACCOUNTS, SUIT FOR **I. L. R. 44 Calc. 1**

See LIMITATION ACT (IX OF 1908), SCH I, ART 115 **I. L. R. 39 All. 81**

See LIMITATION ACT (IX OF 1908), SCH I, ART 116 **I. L. R. 39 All. 355**

PRINCIPAL AND SURETY.

——— *Promissory note, payable on demand—Limitation—Payment of interest by principal—Acknowledgment of debt—Liability of surety—Contract of guarantee—Limitation Act (IX of 1908) ss 18, 20, 21, Sch I, Arts 65, 73, 115—Contract Act (IX of 1872), ss 126, 128* Where an *on demand* promissory note was executed by the debtor and bore an endorsement on it "repayment guaranteed by me," signed by the person purporting to make the guarantee and where the said promissory note was unaccompanied by any writing, restraining or postponing the right to sue *Held,* that the endorsement must be treated as a contract of guarantee by the person purporting to make the guarantee *Held,* also, that the promissory note was a present debt payable without demand, that the liability of the surety on the guarantee accrued from the date of the promissory note, that the Statute of Limitation began to run in favour of the surety from the date of the note, and that for the purposes of this case
Art 115 o
v. Ellam, 2
& Bing
N 812, In
Ayyan v
Mad 245.
v Buckle,
Mohan Mookerjee, 25 C L J 91, and *Dwarka Dass Govardhana Doss* v *Chinnala Krishnaiya, 21 Mad L J. 457,* referred to. Where payment of interest on an *on demand* promissory note was made by the principal debtor with the knowledge and consent of the surety and even at his request, but where there was no evidence that it was made on behalf of such surety *Held,* that the fresh

PRINCIPAL AND SURETY—*concld.*

period of limitation created under s. 20 of the Limitation Act by the payment of interest by the principal debtor could be only in respect of the debt upon which the interest was paid, *viz.*, the debt of the principal debtor. The fact that the interest was paid with the knowledge and consent of the surety and even at his request made no difference, unless the circumstances could be said to render the payment one on behalf of the surety. *Domi Lal Sahu* v. *Roshan Dobay, I. L. R. 33 Calc. 1278, In re Powers, Lindsell* v. *Phillips, 30 Ch. D. 291, In re Frisby, 43 Ch. D. 106, Lewin* v. *Wilson, 11 App. Cas. 639*, distinguished. *Krishto Kishori Chowdhrani* v. *Radha-Roman Munshi, I. L. R. 12 Calc. 330, Hajarimal* v. *Krishnarav, I. L. R. 5 Bom. 647, Coope* v. *Creswell, L. R. 2 Eq. 106, Morgan* v. *Rowlands L. R. 7 Q. B. 493, Green* v. *Humphreys, 26 Ch. D. 474, In re Boswell, [1916] 2 Ch. 359, Astbury* v *Astbury, [1898] 2 Ch. 111, In re The Estate of William Seager, 3 Jur. N. S. 481; 26 L. J. Ch. 809*, and *Gardner* v. *Brooke, 2 I. R. 6*, referred to. *Per* MOOKERJEE, J. Though the liabilities of the debtor and the surety arise out of the same transaction, the liabilities of the two persons are distinct for the purposes of the application of s. 20 of the Limitation Act. *Gopal Daji Sathe* v. *Gopal bin Sonu Bait, I. L. R. 28 Bom. 248*, and *Srinivasa Varadachariar* v. *Echammal, 21 Mad. L. J. 155*, followed. The surety, under the terms of the contract, is either jointly or separately liable, along with the principal debtor; if the debts are deemed joint, s. 21 (2) of the Limitation Act shows that the payment by one of them (the debtor) does not extend the time; on the other hand, if the debts are deemed distinct, the same result follows upon a true construction of s. 20 itself. S. 128 of the Contract Act, which makes the liability of the surety co-extensive with that of the principal debtor, is of no assistance to the plaintiff, as it must be read along with the provisions of the Limitation Act; it defines the measure of the liability and has no reference to the extinction of liability by operation of the Statute of Limitation. A payment by one person cannot keep alive the remedy against another, unless the circumstances are such that payment by the one may be regarded as a payment for the others. There is nothing in the relation of principal and surety itself which makes payment by the principal binding as a payment by the surety. *Cockrill* v. *Sparks, 1 H. & C. 699; 130 R. R. 739, Re Wolmerhausen, 62 L. T. 541*, and *Newton* v. *Paddison, 68 L. T. 405*, referred to.
DRA KISHORE ROY CHOWDHURY *v.* HINDUSTAN CO-OPERATIVE INSURANCE SOCIETY, LD. (1917).
I. L. R. 44 Calc. 978

PRIORITY.

See EXECUTION OF DECREE.
I. L. R. 44 Calc. 1072

PRIVILEGE.

See LIBEL . **I. L. R. 39 All. 561**

PRIVITY OF ESTATE.

———— meaning of—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 108 (*j*).
I. L. R. 40 Mad. 1111

PRIVY COUNCIL, PRACTICE OF.

See HINDU LAW—ENDOWMENT.
I. L. R. 40 Mad. 709

PRIVY COUNCIL, PRACTICE OF—*contd.*

See MORTGAGE.
I. L. R. 44 Calc. 388

See SALE FOR ARREARS OF REVENUE.
I. L. R. 44 Calc. 573

———— *Appeal in criminal case—Conviction on charge of murder—Sentence of death, confirmation of, by Court of Appeal—Improper admission of evidence by Court of Appeal in treating entries in police diary as being evidence—Criminal Procedure Code (Act V of 1898), ss. 172, 374—Error said to vitiate confirmation of sentence.* According to the practice of the Judicial Committee in dealing with an appeal in a criminal case, the general principle is established that the Sovereign in Council does not act in the exercise of the prerogative right to review the Course of justice in criminal cases in the free fashion of a fully constituted Court of Criminal Appeal. The exercise of the prerogative takes place only where it is shown that injustice of a serious and substantial character has occurred. A mere mistake on the part of the Court below, as for example, in the admission of improper evidence, will not suffice if it has not led to injustice of a grave character. Nor do the Judicial Committee advise interference merely because they themselves would have taken a different view of evidence admitted. Such questions are, as a general rule, treated as being for the final decision of the Courts below. Under s. 172 of the Criminal Procedure Code (Act V of 1898), every police officer making an investigation is to enter his proceedings in a diary which may be used at the trial or inquiry, not as evidence in the case but to aid the Court in such inquiry or trial. And by s. 374 when the Court of Session passes sentence of death the proceedings are to be submitted to the High Court for confirmation. and the sentence is not to be executed unless it is confirmed by that Court. In this case which was one of murder the accused was convicted by the Sessions Judge and sentenced to death and that sentence was substantially in every material particular confirmed by the Court of the Judicial Commissioner (as the High Court) on appeal. After confirming the sentence, the High Court of Appeal took into consideration the police diary, made during the preparation of the case, for the purpose of testing the credibility of some of the witnesses for the defence, and treated the entries therein as being evidence in the case discrediting them. *Held*, by the Judicial Committee, that the Court was clearly wrong in so treating the entries in the police diary in a manner which was inconsistent with the provisions of s. 172 of the Criminal Procedure Code. *Queen-Empress* v. *Mannu, I. L. R. 19 All. 390*, approved. But such improper admission of evidence was not a sufficient reason why their Lordships should recommend interference with the judgment and sentence. The conditions of the Code as to jurisdiction had been complied with; the Court of Appeal had before it evidence on which it placed reliance and on which it could properly have based its affirmance and confirmation of the conviction. An error in procedure may be of so grave a character as to warrant the interference of the Sovereign, as for instance, if it deprived an accused of a constitutional or statutory right to be tried by jury or by some particular tribunal; or it may have been carried to

PRIVY COUNCIL, PRACTICE OF—*concld*

such an extent as to cause the outcome of the proceedings to be contrary to fundamental principles which justice requires to be observed. Even if their Lordships thought the accused guilty they would not hesitate to recommend the exercise of the prerogative, were such the case But here the error consisted only in the fact that evidence had been improperly admitted which was not essential to a result which might have been come to wholly independently of it Substantial justice had been done, and that being so, it would be contrary to the general practice to advise the Sovereign to interfere with the result DAL SINGH v KING EMPEROR (1917)
I. L. R. 44 Calc 876

PROBATE AND ADMINISTRATION ACT (V OF 1881).

——————— *Executor, under a* ' " *carr na on family business—Debts*

beneficiary ... *having adverse interest* An executor appointed under Act V of 1881, is in many respects in a different position from a Hindu widow succeeding to her husband's estate, a guardian of a minor, or a *shebait* ... The executor who borrows money in the purpose for the pay to be indemnified out of the estate ... ing, if he shows it was reasonably and properly made. This principle has been accepted by the *Calcutta High Court as applicable to Hindu* executors The principle applies equally to borrowings by the executors in conducting a family business which in India is regarded as a heritable asset, and the executor is personally responsible for them, subject to his right of indemnity against the estate upon proof that the borrowing was in all respects proper and for the ... of the estate Where certain hundis sued stamped to sue for ., executors would fully represent the estate ... not in a case where their personal interest as executors were diametrically opposed to those of the beneficiary and the estate A minor represented as guardian by a nominee of a party whose interest is adverse to the minor's is not properly represented in the suit. SUDHIR CHANDRA DAS v GOBINDA CHANDRA ROY (1917)
21 C. W. N. 1043

——————— s. 89—

See MAHOMEDAN LAW—PRE-EMPTION
I. L. R. 41 Bom. 636

PROCEDURE.

See ADMINISTRATION SUIT
I. L. R. 44 Calc. 890

See CIVIL PROCEDURE CODE, 1908, ss 47, 52 . **I. L. R. 39 All. 47**

See CIVIL PROCEDURE CODE, 1908, s 151, O IX, R 13 **I. L. R. 39 All. 8**

See CIVIL PROCEDURE CODE (1908), O IX, R. 13; O XVII, R. 3.
I. L. R. 39 All. 143

PROCEDURE—*concld*

See CIVIL PROCEDURE CODE (1908), O XXI, RR 92, 93
I. L. R. 39 All. 114

See CIVIL PROCEDURE CODE (1908), O XXXIV, R 8
I. L. R 39 All. 396

See CIVIL PROCEDURE CODE (1908), O XLI, R 21 **I. L. R. 39 All. 388**

See CRIMINAL PROCEDURE CODE (1898), s 339 . **I. L. R. 39 All. 306**

See EXECUTION OF DECREE
I. L. R. 44 Calc. 1072

See HABEAS CORPUS
I. L. R 44 Calc. 76, 459

See LAND ACQUISITION ACT (I OF 1894), s 9 **I L. R. 39 All. 534**

See PROVINCIAL INSOLVENCY ACT (III OF 1907), s 36 **I. L. R. 39 All. 391**

See SANCTION FOR PROSECUTION
I. L. R. 44 Calc 816

See WASTE LANDS ACT, 1863, s 18
I L. R. 44 Calc. 328

PROCESS OF COURT.

——————— **abuse of—**

See INSOLVENCY **I L. R. 44 Calc. 899**

PROCLAMATION.

——————— **application for—**

See SALE FOR ARREARS OF RENT
I. L. R 44 Calc. 715

——————— **dated 5th August 1914—**

See BILL OF EXCHANGE
I. L R. 41 Bom. 566

PROFESSIONAL MISCONDUCT.

1. ——————— *Legal Practitioners Act (XVIII of 1879 as amended by Act XI of 1896), ss 13, 14—Scope of s 14—Contempt of Court—"Court" meaning of* S 14 of the Legal Practitioners Act is not limited in its application to cases covered by cl (a) and (b) only, but covers cases of misconduct under all the clauses of s 13 Misconduct in the presence of the Court which shows d ... of its authority and which obstructs due adı principl actual] to be p for its and wi places ... *In the matter of Purna Chunder Pal, I L R* ... *Calc 1023, In the matter of Southelal Krishna Rao, I L. R 15 Calc 152, Le Measurier v Wajid Hossain, I L R 29 Calc 890, In the matter of Muhammad Abdul Hai, I L R 29 All 61, In the matter of the Second grade Pleaders, I L R 34 Mad 29, In the matter of Gholab Khan, 7 B L R 179, In the matter of Bajrangi Sahai, 15 C. W N 269, In the matter of Kali Prasanna Chowdhury, 11 C L J. 164, In the matter of Radha Charan Chakravarti, 4 C. L J 229, In the matter of an Advocate, a Vakil, a Pleader, and a Mukhtear, 4 C L J. 262, The District Judge of Kristna v Hanumanulu, (1915) Mad W R 1050, In the*

PROFESSIONAL MISCONDUCT—*concld.*

matter of Ganapathi Sastri, 19 *Mad. L. J.* 504, *French* v. *French*, 1 *Hogan* 138, *Rex* v. *Carroll*, 1 *Wilson* 75, *Roach* v. *Hall*, 2 *Atk.* 469, *Ex parte Burrows*, 8 *Ves.* 535, *Ex parte Jones*, 13 *Ves.* 237, *In Re Johnson*, 20 *Q. B. D.* 68, *Ex parte Wilton*, 1 *Dowling N. S.* 805, *Kirby* v. *Webb*, 3 *T. L. R.* 763, *Charlton's Case*, 3 *My. & Cr.* 16, *Helmore* v. *Smith*, 35 *Ch.* 449, referred to. RASIK LAL NAG, *In the matter of* (1916) **I. L. R. 44 Calc. 639**

2. ———————— *Letters Patent, cl.* 10 —*Vakil—Improper advice to client—Obtaining from client a nominal sale-deed for a low value—Misappropriation of client's property—Setting up false defence of ownership in a suit against him by the client for its recovery—Giving false evidence and suborning perjury.* A vakil was found guilty of: (*a*) improperly suggesting to a client, seeking his advice as to how to recover his properties from his adversary, the execution, in his (vakil's) own favour, of a nominal sale-deed thereof for a low value, (*b*) setting up after the execution of such a sale-deed, a title in himself, contrary to the terms of the agreement with the client, (*c*) setting up a false defence of his ownership, in a suit against him by the client for a cancellation of the sale-deed, (*d*) supporting the false defence by his own false evidence and (*e*) suborning perjured evidence in support of the same. Their Lordships held that the vakil was guilty of misconduct and suspended him under cl. 10 of the Letters Patent, from practice for a period of two years. *In the matter of a* VAKIL OF THE HIGH COURT (1916) . . **I. L. R. 40 Mad. 69**

PROMISSORY NOTE.

———— **payable on demand—**

See PRINCIPAL AND SURETY. **I. L. R. 44 Calc. 978**

———— **payable to a person or order or bearer, illegality of—**

See PAPER CURRENCY ACT s. 526. **I. L. R. 40 Mad. 585**

———————— *Promissory Note payable on demand—Liability of surety—Guaranteeing such note when arises. Held*, that the liability of the surety arose immediately on the execution of the guarantee and limitation ran from that date. SREENATH ROY *v.* PEARY MOHAN MUKHERJI (1896) . **21 C. W. N. 479**

PROTRACTION OF LITIGATION.

See GRANT . **I. L. R. 41 Calc. 585**

PROVINCIAL INSOLVENCY ACT (III OF 1907).

———— **ss. 2 (c) and (g), 22, 46 and 52**—*Dismissal of insolvency petition by Official Receiver—Application to District Court to revise, under s. 22, whether an appeal.—Official Receiver, whether a Court—Appeal to High Court from order of District Court, maintainability of.* A District Judge transferred a petition of a debtor to be adjudged an insolvent to the Official Receiver. The petition was dismissed by the Receiver on the grounds that the debtor had no realizable assets, that he might be concealing his assets, ready cash and outstandings, that he was not likely eventually to get his discharge and that therefore the petition was an abuse of process of Court. On an application by the debtor under s. 22 of the Provincial Insolvency Act (III of

PROVINCIAL INSOLVENCY ACT (III OF 1907) —*contd.*

———— **s. 2**—*concld.*

1907) the District Court confirmed the order: *Held*, that an appeal lay to the High Court under s. 46 of the Act, from the order of the High Court: *Held* further, that the Official Receiver is not a Court subordinate to the District Court within s. 46 (*1*) of the Act and that an application to the District Court under s. 22 of the Act to revise the order of the Official Receiver is not an "appeal" within s. 46: *Held*, also, that the order of dismissal was based on a misconception of the Insolvency Procedure and should be set aside. *Jeer Chetti* v. *Rangaswami Chetti*, 22 *Mad. L. J.* 52, followed. ALLA *v.* KUPPAI (1916) **I. L. R. 40 Mad. 752**

———— **ss. 5, 6, 15, 16—**

See INSOLVENCY. **I. L. R. 44 Calc. 535**

———— **ss. 16, 22**—*Mortgage of factory—Decree for sale—Appointment of receiver to get in profits for benefit to decree-holder—Insolvency of judgment-debtor—Profits appropriated by creditors of insolvent—Suit by mortgagee-decree-holder to recover profits.* One J. L., being the mortgagee of a cotton ginning factory, obtained a decree for sale on his mortgage, but, instead of the factory being sold in execution of this decree, a receiver was appointed for the period of one year by consent of the decree-holder. The receiver was to work the factory, receive the profits and hand them over to the decree-holder. Notwithstanding that no fresh order was passed by the executing court, the receiver remained in possession of the factory for more than two years. He received the profits, but in accordance with the local practice of the trade made them over to a certain association for the collection and distribution of the profits of cotton ginning factories. Meanwhile the mortgagor became insolvent, and creditors holding simple money decrees against him proceeded to attach the profits of the factory in the hands of the association, and the profits were divided rateably between these creditors. The mortgagee then sued to recover the profits of the factory earned whilst the re- ceiver had been in charge, making defendant (i) the receiver originally appointed by the Court (ii) the creditors of the insolvent mortgagor an (iii) the receiver in insolvency: *Held*, that th appointment of the original receiver having bee made with the consent of the decree-holder an the judgment-debtor was not made withou jurisdiction; that the profits of the factory f the year for which the receiver was appoint were assignable entirely to the satisfaction of t mortgage decree, and that the suit as again the receiver in insolvency was not barred either s. 16 or s. 22 of the Provincial Insolven Act, 1907. *In re Patts: Ex parte Taylor*, [18 1 *Q. B.* 648, and *Croshaw* v. *Lyndhurst Ship Co pany*, [1897] 2 *Ch. D.* 151, distinguished. JHUN LAL *v.* PIARI LAL (1916) **I. L. R. 39 All.**

———— **ss. 16, 36, 43**—*Insolvent—Property of insolvent which does not vest in the receiver—Oc pancy holding—House of agriculturist.* A per who was an agriculturist by occupation adjudicated an insolvent. Shortly before insolvency he had granted a lease of his occup holding. The zamindar was the principal cred The District Judge ordered the land to be

PROVINCIAL INSOLVENCY ACT (III OF 1907) *—contd*

——— s 16—*concld*

rendered to the zamindar and the insolvent s house to be sold *Held*, that the property of the insolvent which is exempted by any enactment for the time being in force from liability to attachment and sale in execution of a decree does *not* vest in the Court or the receiver, therefore the District Judge had no jurisdiction to direct the receiv
to set aside the
ing the sale of t
the house being
exempted from
of a decree, nev
ceiver SAGAR LAL

I. L. R. 39 All 120

——— ss 16, 41 42, 45—*Insolvent—Assets declared by receiver not realizable—Discharge of insolvent—Subsequent sale by insolvent of assets so declared unrealizable* Part of the apparent assets of an insolvent consisted of mortgage rights in certain property These rights were not dealt with by the receiver because he considered that it would be impossible to realize anything on them The insolvent was accordingly discharged Thereafter the insolvent managed to sell the mortgagee rights which has been declared unsaleable by the receiver *Held* that in the circumstances the sale was good and passed whatever rights the discharged insolvent had to the purchaser SHEONANDAN *v* KASHI (1916)

I. L R 39 All 223

——— s 18—*Sale deed executed benami by the insolvent—Receiver entitled to remove the so called purchasers from possession of properties, sold—Indian Limitation Act (IX of 1908) Sch I Art 91* Where insolvents, in order to save their property from their creditors had executed fictitious sale deeds thereof in favour of relations, but never gave and never intended to give the so called purchasers possession *Held* that such transaction was no bar to the receiver taking possession of the property comprised in the said sale deeds as the property of the insolvents. *Petherpermal Chetty* v *Muniandy Servai, I L R 35 Cal 551*, referred to JAGRUP SAHU *v* RAMANAND SAHU (1917) I L R 39 All. 633

——— s 22—*Attachment of property as that of an insolvent—Decision of Insolvency Court as b* ... *to property attached that the*
...

by a receiver as the property of the insolvent, that the property belongs to one or the other claimant does not operate as *res judicata* in respect of a suit on title by one claimant against the other for the recovery of such property HUKUMAT RAI *v* PADAM NARAIN (1917)

I. L. R. 39 All. 353

——— ss 22, 46—

See CIVIL PROCEDURE CODE (1908) s 11 I L R 39 All. 626

——— '*Person aggrieved*'—*Right of appeal—Necessary parties* *Held* that one creditor out of the general body of creditors of an insolvent has no *locus standi* in an application in the Insolvency Court made against the estate

PROVINCIAL INSOLVENCY ACT (III OF 1907) *—contd*

——— s. 22—*concld*

of the insolvent, represented by the receiver, by a person claiming adversely to the insolvent s estate. He has therefore no right of appeal against the decision on such an application. *Ex parte Sidebotham 14 Ch. D 458* and *Balli* v *Nand Lal 33 Indian Cases 773* referred to *Kelokey Churan Banerjee* v *Sreemutty Sarat Kumari Debee 20 C W N 995* distinguished, JHABBA LAL *v* SHIB CHARAN DAS (1916)

I. L. R. 39 All. 152

——— ss, 34, 35—*Application for declaration of insolvency—Property of applicant attached—Power of Insolvency Court to stay proceedings in execution* An Insolvency Court has no power to interfere with execution proceedings pending in another Court against a person who has filed his petition to be declared insolvent at least, until either the debtor has been declared insolvent or until a receiver has been appointed ANUP KUMAR *v* KESHO DAS (1917)

I L R 39 All 547

——— s 36—

1 ——— *Insolvent—Transfer of property by insolvent—Validity of such transfer* S 36 of the *Provincial Insolvency Act is wider* in its scope than s. 53 of the Transfer of Property Act. Under the former Act it is not necessary t ... made with intent
...
determine the validity of a transfer by a debtor of all his property in lieu of a debt it is a matter for consideration whether a real transfer was intended by the transferee or it was merely fictitious, and whether it was made in good faith, the *onus* of proving good faith being upon the transferee MUHAMMAD HABIB ULLAH *v* MUSHTAQ HUSAIN (1916) [I L R 39 All. 95

2 ——— *Insolvency—Procedure—Application by receiver to have annulled a transfer made by the insolvent* Where a receiver in insolvency seeks to have set aside under the provisions of s 36 of the Provincial Insolvency Act, 1907 a transfer made by the insolvent he should file a written statement (similar to a plaint in ordinary suits) setting forth the grounds on which the transfer is challenged the transferee should put in a *written reply* and the proceeding should continue very much as in a suit. Such matters should not and cannot properly be disposed of in a summary manner CHUNNOO LAL *v* LACHMAN SONAR (1917) I L R 39 All. 391

——— s 37—*Surety for debt of insolvent whether creditor* A person who stands surety for the payment of a debt by the insolvent is a creditor within the meaning of that expression in s. 37 of the *Provincial Insolvency Act (III of 1907)* *Nalam Viswanatham* v *Official Assignee of Madras, 32 I C 795*, overruled. RODERIQUES *v* RAMASWAMI CHETTIAR (1913)

I. L. R 40 Mad 783

——— s 42—*Adjudication, annulment of, if permissible on other than statutory grounds—Failure of receiver to pay debts—Consent of opposing creditor* The Court has no power to annul

PROVINCIAL INSOLVENCY ACT (III OF 1907) —*contd.*

———— **s. 42**—*concld.*

an adjudication of insolvency otherwise than in exercise of the authority vested in it by the statute. Where therefore none of the circumstances mentioned in s. 42 of the Insolvency Act as grounds for annulment had been established, the order of the Court annulling adjudication on the petition of the insolvents was erroneous, and the fact that the Receiver of the insolvents' property had been unable to satisfy the debts was no ground for annulment. The fact that the opposing creditors was proved to have at one time consented to a composition was not sufficient to authorise the Court to annul an adjudication. The consent of all the creditors is not by itself sufficient to justify an order of annulment. The Court had to consider not merely that what they have agreed to is for the benefit of the creditors as a whole but also that the annulment would not be detrimental to commercial morality. *Quære*: Whether under s. 42 of the Provincial Insolvency Act, the Court has discretion to refuse to annul an adjudication when the circumstances mentioned in sub-s. (*1*) to that section are established. MOTILAL *v.* GANAPATRAM (1915) . . . **21 C. W. N. 936**

———— **ss. 43** (*2*), **46**—*Creditor—"Person aggrieved"—Appeal.* One of the creditors of an insolvent, in whose case no receiver had been appointed, applied to the Court making allegations that the insolvent had been guilty of an offence under s. 43, sub-s. (*2*) of the Provincial Insolvency Act, 1907, the Court, however, held that no case was made out and refused to move in the matter: *Held*, that the creditor applicant was not a "person aggrieved" within the meaning of s. 46, sub-s. (*2*) of the Act, and had no right of appeal against the Court's order. *Iyappa Nainar* v. *Manikka Asari, 27 Indian Cases, 251,* referred to. LADU RAM *v.* MAHABIR PRASAD (1916) . . . **I. L. R. 39 All. 171**

———— **ss. 43** (*2*) **(b) and 46** (*1*) **and** (*2*)—*Creditor's petition to inquire into commission of an offence—Inquiry and refusal to frame a charge—Appeal, right of.* In the course of a proceeding in insolvency, a creditor filed a petition alleging the commission of an offence by the insolvent and asking the Court to take action against him under s. 43, cl. *2* (*b*) of the Provincial Insolvency Act (III of 1907). The Judge inquired into the petition but dismissed it, refusing to frame a charge: *Held,* that the creditor had no right of appeal as he is not a "person aggrieved" within the meaning of s. 46 of the Act. IYAPPA NAINAR *v.* MANICKA ASARI (1914) **I. L. R. 40 Mad. 630**

———— **s. 47**—*Civil Procedure Code* (*1908*), *O. XXI, r. 71—Sale of property of insolvent by receiver—Default of purchaser—Re-sale—Order by Court on purchaser to make good deficiency—"Proceeding."* S. 47 of the Provincial Insolvency Act, 1907, has not the effect of making the provisions of O. XXI of the Code of Civil Procedure, 1908, applicable to a sale of the property of an insolvent held by a receiver under the orders of the District Judge. If, therefore, the purchaser at such a sale defaults and the property is resold for a sum less than the original bid, the first purchaser cannot be called upon under O. XXI, r. 71, to make good the deficiency. *Mul Chand* v.

PROVINCIAL INSOLVENCY ACT (III OF 1907) —*concld.*

———— **s. 47**—*concld.*

Murari Lal, I. L. R. 36 All. 9, referred to. CHEDA LAL *v.* LACHMAN PRASAD (1916). **I. L. R. 39 All. 267**

PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887).

———— **s. 17**—

See SMALL CAUSE COURT SUIT. **I. L. R. 44 Calc. 950**

———— **ss. 32 to 35**—

See CIVIL PROCEDURE CODE (1908), s. 24 (*4*). **I. L. R. 39 All. 214**

———— **s. 35**—*Decree passed by Small Cause Court—Small Cause Court abolished and execution transferred to a Munsif—Jurisdiction—Appeal—Indian Limitation Act* (*IX of 1908*), *s. 19—Acknowledgment.* Where a Court of Small Causes had passed a decree and was then abolished and the execution proceedings were taken in the Court of a Munsif: *Held*, that the Munsif's orders in execution were not the orders of a Court of Small Causes and were therefore open to appeal. *Sarju Prasad* v. *Mahadeo Pande, I. L. R. 37 All. 450,* followed. *Mangal Sen* v. *Rup Chand, I. L. R. 13 All. 324,* dissented from. *Held*, also, that an objection filed in answer to an application for execution of decree by the arrest of the judgment-debtor, upon which a warrant of arrest had been issued, to the effect that the judgment-debtor was a poor man and that the warrant should not be executed, could not be construed into an acknowledgment of the decretal debt within the meaning of s. 19 of the Indian Limitation Act, 1908. *Ramhit Rai* v. *Satgur Rai, I. L. R. 3 All. 247,* distinguished. LACHMAN DAS *v.* AHMAD HASAN (1917). **I. L. R. 39 All. 357**

———— **Sch. II, Art. 8**—*Suit for rent—Suit of a nature cognisable by the Court of Small Causes—Civil Procedure Code* (*Act V of 1908*), *s. 102—Second appeal.* A suit for rent for an amount less than Rs. 500 was filed in the Second Class Subordinate Judge's Court. By a Government Notification contemplated by Art. 8 of the Second Schedule of the Provincial Small Cause Courts Act, 1887, the Subordinate Judges of all districts in the Bombay Presidency proper were invested with authority to try on the Small Cause Side of their Courts all suits for the recovery of rent arising within the local limits of the ordinary jurisdiction of their Courts and falling within the pecuniary limits up to which suits are cognisable by them as Judges of Courts of Small Causes. Both the lower Courts decreed the claim. In the High Court a preliminary objection was taken that no second appeal lay on the ground that the suit in which it was preferred was of a nature cognisable by Courts of Small Causes within the meaning of s. 102 of Civil Procedure Code, 1908: *Held*, allowing the objection, that no second appeal lay. RAMKRISHNA YESHWANT *v.* THE PRESIDENT OF THE VENGURLA MUNICIPALITY (1916) . . . **I. L. R. 41 Bom. 367**

———— **Sch. II, Art. 35 (ii)**—*Suit for compensation for removal of trees and crops—Jurisdiction—Want of jurisdiction not urged in defence—Decree, if should be set aside on review—Objection, if may be waived.* A suit for compensation for a tree

PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887)—*concld.*

———— **Sch. II, Art. 35 (ii)**—*concld.*

alleged by plaintiff to have been grown by him and cut by the defendant and for crops of mustard raised by him and misappropriated by the defendant from land alleged to be plaintiff's property and in his possession is excluded from the jurisdiction of the Small Cause Court under the Art 35, sub cl (2) of Sch II of the Provincial Small Cause Courts Act. Where no objection to the Court's jurisdiction having been taken at the original trial, the suit was decreed and an application by the defendant for review was dismissed on the ground that the objection was not raised at the trial: *Held*, that the review application should have been granted, as where there is an entire absence of jurisdiction no action on the part of the plaintiff or inaction on the part of the defendant can invest the Court with jurisdiction. RAMPROSHAD PRAMANIK *v.* SRICHARAN MANDAL (1917) . . **21 C. W. N. 1109**

PUBLIC BODY.

See ELECTION . **I. L. R. 40 Mad. 941**

PUBLIC DRAIN.

———— *House drain—Title—Calcutta Municipal Act (Beng III of 1899), ss 3, cl (16), 286, 337—Vesting of a street in a municipality—its effect—Rights of the owner* The legal effect of the statutory vesting of a street in a municipality is not to transfer to the municipality the ownership in the site or soil over which the street exists. The effect of the statutory provision is merely to vest in them the property in the surface of the street, road or drain and in so much of the actual soil below and air above as may reasonably be required for its control, protection and maintenance as a highway or drain for the use of the public. The Court will not presume that the intention of the Legislature was to confiscate private property and vest it in a public corporation without compensation granted to the proprietor. The right of the owner was intended to be abridged only to the extent necessary for the discharge of the statutory duties imposed on the Corporation for the benefit of the public. The property of the local authority concerned does not extend further than is necessary for the maintenance and use of the highway as a highway; that, subject to this qualification, the original owner's rights and property remain, and that if the highway ceases to be a highway, the owner becomes entitled to full and unabridged rights of ownership in the property. *Sundaram Ayyar* v. *Municipal Council of Madura, I. L. R. 25 Mad. 635*, and *Madathapu Ramaya* v. *Secretary of State for India, I. L. R. 27 Mad. 386*, followed. *Chairman of the Naihati Municipality* v. *Kishori Lal Goswami, I. L. R. 13 Calc. 171, Modhu Sudan Kundu* v. *Promoda Nath Roy, I L. R 20 Calc. 732, Chairman of the Howrah Municipality* v. *Khetra Krishna Mitter, I. L. R 33 Calc. 1290, Nihal Chand* v. *Azmat Ali, I. L. R 7 All 362, Nagar Valab Narsi* v. *The Municipality of Dhandhuka, I. L. R. 12 Bom. 490, The Municipal Commissioners of Madras* v. *Sarangapani Mudaliar, I. L. R 19 Mad. 154, Sundaram Ayyar* v. *The Municipal Council of Madura, I. L. R. 25 Mad. 635, Madathapu Ramaya* v. *Secretary of State for India, I. L. R 27 Mad. 386, The Mayor of Tun-*

PUBLIC DRAIN—*concld*

bridge Wells v. *Baird, [1896] A. C. 434, Municipal Council of Sydney* v. *Young, [1898] A. C. 457, Finchley Electric Light Co.* v. *Finchley Urban Council, [1903] 1 Ch. 437, Foley's Charity Trustees* v. *Dudley Corporation, [1910] 1 K. B. 317, London and N. W. Ry Co* v. *Westminster Corporation, [1905] A. C 426, Lodge Holes Colliery Co* v. *Wednesbury Corporation, [1908] A. C. 323, Battersea Vestry* v. *County of London, [1899], 1 Ch. 474*, referred to GUNENDRA MOHAN GHOSH *v.* CORPORATION OF CALCUTTA (1916) **I. L. R. 44 Calc. 689**

PUBLIC OFFICER.

———— **syndicate a—**

See SPECIFIC RELIEF ACT (I OF 1877), s 45 **I. L. R. 40 Mad. 125**

PUBLIC PATHWAY.

———— *Obstruction Proceedings against several without statement of particular acts of obstruction done by each—Initial and final orders, vague—No reasonable opportunity given to show cause and adduce evidence—Legality of order based on local inquiry or information at time of conditional order—Criminal Procedure Code (Act V of 1898), ss 133, 137* In a proceeding under s. 133 ... ist several ... unlawful ... and final ... obstruction caused by each, and which he is required to remove, unless it is alleged that all of them are jointly responsible for all the obstructions complained of An order under the section should not be vague, indefinite or ambiguous, but such as to afford information by its terms to the person to whom it is directed what he is to do in order to comply with it *Kali Mohan Kar* v *Nakari Chandra Das, 11 C L J 114*, followed. It is desirable that responsible opportunity should be

... *Amaddi Halder, I L R. 24 Calc 395*, approved An order under s. 133 cannot, even by consent of parties, be based on information gathered at a local inquiry. *Upendra Nath Mandal* v. *Rampal, 10 C. L. J. 482*, approved. RAIMOHAN KARMAKAR *v* EMPEROR (1916) **I. L. R. 44 Calc. 61**

PUISNE MORTGAGE.

See TRANSFER OF PROPERTY ACT (IV OF 1882), s 67 . **I. L. R. 40 Mad. 77**

PURCHASE.

See BENAMI PURCHASE.

PURCHASE MONEY.

See MORTGAGE. **I. L. R. 44 Calc. 542**

See RATEABLE DISTRIBUTION. **I. L. R. 44 Calc. 789**

PURCHASER.

———— **in puisne mortgagee's suit, right of—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 67 . **I. L. R. 40** [illegible]

PURCHASER—*concld.*

———— rights of—

See PRE-EMPTION.

I. L. R. 44 Calc. 675

PURCHASER IN EXECUTION.

———— rights of—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 67 . I. L. R. 40 Mad. 77

PUTNI.

———— purchase of—

See SALE FOR ARREARS OF RENT.

I. L. R. 44 Calc. 715

PUTNIDAR.

———— right of—

See CHAUKIDARI CHAKARAN LANDS.

I. L. R. 44 Calc. 841

———— *Part of rent payable by putnidar assigned for payment of revenue—Separate account opened by a co-sharer zemindar—Suit to apportion assigned rent and to order putnidar to pay plaintiff's share of same to plaintiff's account, if maintainable—Transfer of Property Act (IV of 1882), s. 37.* Where a *putnidar* as part of the consideration for the use and occupation of the land undertook to pay the revenue payable by the zemindar direct in the Collectorate on account and to the credit of the landlord: *Held*, that the revenue so paid by the *putnidar* was part of the rent paid to the landlord. The owners of a share in the zemindari having got a separate account opened in respect of their share under s. 10 of Act XI of 1859, sued the *putnidar* and his co-sharers for an apportionment as between the co-sharers of the revenue payable by the *putnidar*, and for an order directing the *putnidar* to make separate payment in the Collectorate to the account and credit of the plaintiffs of the amount due in respect of their share: *Held*, that upon the principle underlying s. 37 of the Transfer of Property Act and on the authority of *Sreenath Chunder v. Mohesh Chunder, 1 C. L. R. 453, Issur Chandra* v. *Ramkrishna, I. L. R. 5 Calc. 902*, and *Raj Narain Mitter* v. *Ekadasi Bag, I. L. R. 27 Calc. 479 : s. c. 4 C. W. N. 491*, the suit was maintainable and should be decreed, the objection of the *putnidars* that the apportionment would impair the value or affect the character of their permanent lease being groundless and the objection that at each of the four kists they would have to write two challans instead of one being frivolous. GOUR GOPAL SIHNA *v.* GOSTA BEHARY PRAMANIK (1916) . . . 21 C. W. N. 214

Q

QUALITY-MARK.

See TRADE-NAME, INFRINGEMENT OF

I. L. R. 41 Bom. 49

QUARRIES.

———— right of grantee to—

See INAM . I. L. R. 40 Mad. 268

R

RAILWAY.

See EAST INDIAN RAILWAY.

21 C. W. N. 815

RAILWAY ADMINISTRATION.

See LOSS OF GOODS.

I. L. R. 44 Calc. 16

RAILWAY PASSENGER.

———— *Fraud—Travelling without a ticket but not with intent to defraud—Course open to Railway Administration in such case—Power to forcibly eject passenger—Assault—"Railway"—"Rolling stock"—Railways Act (IX of 1890), ss. 3 (4), (10), 68, 69, 113, 120, 122—Railways Act (IV of 1879), ss. 31 and 32—Enhancement of sentence on hearing of Reference.* —The main and primary purpose of ss. 68 and 69 of the Railways Act (IX of 1890) is to prevent persons from travelling in fraud of the Company without payment of the fare, and the obligation to show their tickets, when required, is subsidiary only to such purpose. Travelling without a ticket, in the absence of intent to defraud, is not an offence. In such a case the only course open to the Railway Administration is that provided in s. 113. There is no provision in the Act for ejecting passengers except in certain circumstances such as are specified in s. 120. S. 122 does not apply to passengers travelling in a railway carriage, as the term "railway" in s. 3 (4) excludes a carriage. Where a person travelled without a ticket, not with intent to defraud but because he arrived as the train was about to start and was, therefore, unable to purchase one, and when asked for it by the travelling ticket checkers offered to pay the fare and excess charge on grant of a receipt, but refused to leave the compartment at the next station and purchase a ticket as he was directed to do by the ticket-checkers: *Held*, that the ticket-checkers had no lawful authority to remove him thereupon forcibly from the carriage and to beat him with their fists, and that they were guilty of an offence under s. 323 of the Penal Code. *Pratab Daji* v. *B., B. & C. I. Railway Co., I. L. R. 1 Bom. 52* distinguished. *Butler* v. *Manchester, Sheffield and Lincolnshire Railway Company, 21 Q. B. D. 207*, referred to. The Court cannot entertain an application for enhancement on the hearing of a reference under s. 438 of the Code. Such applications ought to be made in the usual way, and are not ordinarily entertained on behalf of private parties. MOHAMMED HOSAIN *v.* FARLEY (1916)

I. L. R. 44 Calc. 279

RAILWAYS ACT (IX OF 1890).

———— ss. 3, 68, 69, 113, 120, 122—

See RAILWAY PASSENGER.

I. L. R. 44 Calc. 279

———— ss. 3 (6), 77, 140—

See LOSS OF GOODS.

I. L. R. 44 Calc. 16

———— as amended by Act IX of 1896—

———— s. 7—*City of Bombay Municipal Act, 1888, s. 289—Laying Railway lines by Railway Administration across public street vested in Municipality—Land Acquisition Act (I of 1894), provisions of, inapplicable.* S. 7 of the Indian Railways Act, 1890 (as amended by Act IX of 1896), enacts :

RAILWAYS ACT (IX OF 1890)—*contd.*

——— s. 7—*concld*

Act and, in belonging to provisions of any enactment for the time being in force for the acquisition of land for public purposes, and for

for the time being in force, make or construct in, upon, across, under or over any lands, or any streets . . . . lines of railway . . . . as the Railway administration thinks proper. (ii) The exercise of the powers conferred on a Railway administration by sub s. (*1*) shall be subject to the control of the Governor General in Council" The respondents constructed Railway lines across a street vested in, and under the control of, the appellants by virtue of the provisions of the City of Bombay Municipal Act, 1888. In a suit by the appellants for a declaration that the respondents were not legally entitled to lay lines of railway across such street without either obtaining their permission, or acquiring the street under the provisions of the Land Acquisition Act, 1894 *Held* (affirming the decision of the High Court on appeal dismissing the suit), that the taking the railway on the level across the street was not acquisition of immovable property within the meaning of s 7 of the Indian Railways Act, 1890, as amended The provisions of the Land Acquisition Act were not so expressed as to cut down the power conferred by that section on the respondents to carry a line of railway across a street subject to the control of their powers by the Governor General, and that Act was inapplicable to such a case MUNICIPAL CORPORATION OF CITY OF BOMBAY *v.* G I P. RAILWAY COMPANY (1916)

I. L. R. 41 Bom. 291

——— s. 72, sub-s. *1—Liability of Railway Administration for loss of goods delivered for carriage, the same as that of bailee—Indian Contract Act (Act IX of 1872), s. 151—Loss of goods delivered*

defendant pleaded in substance that the goods were destroyed while in course of transmission by

a bailee under the Indian Contract Act. That the liability of the defendant must be measured solely by the test formulated in ss 151 and 152 of the Indian Contract Act. That when goods have not been delivered to the consignees at the place of destination the plaintiff need not prove how the loss occurred, the burden lies upon the bailee to prove the existence of circumstances which exonerate him from liability for the loss. That the defendant having discharged this burden the plaintiff's claim failed. That there is no foundation for the contention that a Railway Administration when it accepts goods for transmission is in the position of insurers as common

RAILWAYS ACT (IX OF 1890)—*concld.*

——— s. 72—*concld*

carriers. That even if there was negligence on the part of the Railway Administration, if the act of God was the proximate cause, the defendant Railway would not be liable SURENDRO LAL CHOWDHURI *v.* SECRETARY OF STATE (1916)

21 C. W. N. 1125

——— s. 77—*Notice to Manager—Agent,*

notice required by s. 77 must be given to the Agent; service of notice on the Traffic Manager is not sufficient KALA CHAND SHAHA *v* SECRETARY OF STATE (1917). . **21 C. W. N. 751**

RAJINAMA AND KABULIYAT.

See LAND REVENUE CODE (BOM V OF 1879), s. 74. **I. L. R. 41 Bom. 170**

See REGISTRATION ACT (XVI OF 1908), s 17 **I. L. R. 41 Bom. 510**

RATEABLE DISTRIBUTION.

See EXECUTION OF DECREE

I. L. R. 44 Calc. 1072

——— *Civil Procedure Code (Act V of 1908) s 73, O XXI, r. 65—Policy underlying the section—Receipt of purchase money by agent, effect of.* The policy, which underlies s 73 of the Code of Civil Procedure, obviously is to fix the point of time when the entire body of persons entitled to claim rateable distribution should be finally ascertained; that point of time is the moment when the entire purchase money has been paid by the purchasers It is immaterial from this point of view whether the purchase-money has been actually paid into the Treasury or into the hands of a person employed by the Court to hold the sale When a sale has been held by a Court in execution, under O. XXI, r. 65, receipt of purchase money by the agent is, for the purposes of s 73, equivalent to receipt of assets by the Court *Golam Hossein* v *Fatima Begum,*

I. L. R. 44 Calc. 789

REASONABLE NOTICE.

See SCHOOL MASTER

I. L. R. 44 Calc. 917

RECEIVER.

See CIVIL PROCEDURE CODE (ACT V of 1908), s. 60 (*1*) . **I. L. R. 40 Mad. 302**

See PROVINCIAL INSOLVENCY ACT (III OF 1907), ss. 16, 22

I. L. R. 39 All. 204

——— powers of—

See PROVINCIAL INSOLVENCY ACT (III OF 1907), s. 18 **I. L. R 39 All. 633**

——— *Order appointing a receiver without naming anybody as receiver, appealability of—Civil Procedure Code (Act V of 1908),*

RECEIVER—*concld.*

O. XL, r. 1, and O. XLIII, r. 1. Held by the Full Bench (SPENCER, J., *contra*), that an order of a Court that a receiver should be appointed in a case without appointing anybody by name as receiver and adjourning the case to a later date for so appointing one is an order under O. XL, r. 1, and is appealable under O. XLIII, r. 1 (*s*), Civil Procedure Code (Act V of 1908). *Venkatasami* v. *Sridavamma, I. L. R. 10 Mad. 179*, applied. *Upendra Nath Nag Chowdry* v. *Bhupendra Nath Nag Chowdry, 13 C. L. J. 157*, and *Srinivas Prosad Singh* v. *Kesho Prosad Singh, 14 C. L. J. 489*, dissented from. *Per* SPENCER, J. Such an order is not appealable being only an interlocutory and not a final order. The test of whether an order is appealable is to see whether it completely disposes of the petition for appointing a receiver or not. If anything remains to be done in the petition, the order passed on it is not a final one and is not appealable. PALANIAPPA CHETTY *v.* PALANIAPPA CHETTY (1916)
I. L. R. 40 Mad. 18

RECITALS IN DEEDS.

See HINDU LAW—ALIENATION
I. L. R. 44 Calc. 186

RECORD-OF-RIGHTS.

——— **entry in—**

See COURT-FEE . **I. L. R. 44 Calc. 352**

RECOUPMENT.

See LAND ACQUISITION
I. L. R. 44 Calc. 219

RECTIFICATION OF REGISTER.

See COMPANIES ACT (VII OF 1913), s. 38
I. L. R. 41 Bom. 76

REDEMPTION.

See MORTGAGE . **I. L. R. 39 All. 618**

See REGISTRATION ACT (XVI OF 1908), s. 17 . . **I. L. R. 41 Bom. 510**

See TRANSFER OF PROPERTY ACT (IV OF 1882), ss. 83, 84 **I. L. R. 39 All. 719**

——— **decree for—**

See CIVIL PROCEDURE CODE (1908), O. XXXIV, R. 8 . **I. L. R. 39 All. 396**

——— **right of—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 91 . **I. L. R. 39 All. 536**

——— **suit for—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 47; O. XXI, RR. 100, 101.
I. L. R. 40 Mad. 964

See MORTGAGE . **I. L. R. 39 All. 423**

See MORTGAGOR AND MORTGAGEE.
I. L. R. 41 Bom. 357

REDEMPTION SUIT.

See COMMISSIONER.
I. L. R. 41 Bom. 719

REFERENCE TO HIGH COURT.

See ACQUITTAL . **I. L. R. 44 Calc. 703**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), ss. 435, 438.
I. L. R. 41 Bom. 47

REFORMATORY SCHOOLS ACT (VIII OF 1897).

——— **s. 31**—*"Youthful offender"—Punishment—Powers of Courts dealing with youthful offenders.* S. 31 of Act VIII of 1897, read with the definition of 'youthful offender' enables practically any Court in the case of an offender under fifteen to deliver him to his parents with or without sureties for his future good behaviour. EMPEROR *v.* ABDUL AZIZ (1916) . **I. L. R. 39 All. 141**

REGISTRATION.

See REGISTRATION ACT (XVI OF 1908).

REGISTRATION ACT (III OF 1877).

See VENDOR AND PURCHASER.
I. L. R. 41 Bom. 300

——— **effect of—**

See GIFT . . **I. L. R. 40 Mad. 204**

REGISTRATION ACT (XVI OF 1908).

——— **s. 17**—*Compulsory registration—Rajinama and Kabuliyat—Mortgage of lands in an Inam village—Mortgagor passing a Rajinama in favour of a third person—Kabuliyat by the person to the Inamdar—Transfer of Khata in Inamdar's books—Extinction of the equity of redemption.* One A, holder of lands in an Inam village, mortgaged the lands with one R (father of defendants Nos. 2 and 3) in 1871. In 1875, A passed a Rajinama in favour of one J and gave notice to the Inamdar to transfer his khata in the Inamdar's books to the name of J. J on the same day passed a Kabulyat to the Inamdar agreeing to pay assessment due to Government. J in turn had the khata transferred to one V who in 1878 executed a Rajinama in favour of defendant No. 2. In 1913, plaintiffs as the heirs of A sued to redeem the property. The defendants Nos. 2 and 3 contended that they had become owners of the lands. The Subordinate Judge dismissed the suit holding that A transferred his interest in the lands by the Rajinama in 1875 and, therefore, the plaintiffs had no interest in the lands as owners. The Assistant Judge, in appeal, reversed the decree and allowed redemption on the ground that the Rajinama by A could not be proved in Court as it required registration. On appeal to the High Court: *Held,* that the plaintiffs' suit to redeem must fail as the Rajinamas and Kabulyats although not registered were good evidence of the transfer having taken place since they were documents between the occupant and his superior holder and not documents between the transferor and the transferee: they recited the transfer which had taken place presumably for consideration, but they themselves did not purport to operate as transferring any interest to another. *Held,* further, that even assuming that they fell within the terms of s. 17 of the Indian Registration Act, 1908, as operating to extinguish an interest in immoveable property, it was not shown that they required registration, the interest extinguished by them being of a value less than Rs. 100. *Held,* also, that at the time these transactions took place from 1875 to 1878 it was not necessary according to the law that there should be any document evidencing the transfer but payment of price and delivery of possession completed the transaction. IMAM VALAD IBRAHIM *v.* BHAU APPAJI (1917) . **I. L. R. 41 Bom. 510**

REGISTRATION ACT (XVI OF 1908)—*contd*

——— s 17, sub-s (*1*) (d)—*Lease of land dar salne mate—Lease exceeding one year—Registration compulsory* It was provided by a lease as follows "We have taken these three fields for cultivation from you yearly (*dar salne mate*) on condition that we are to pay the assessment

restore possession of the fields to you as soon as you ask us to do so" *Held*, on a construction of the lease, that the words *dar salne mate* (year to year) taken in connection with the total absence of any date for the expiry of the tenancy suggested that the parties contemplated that the lease should operate for a period exceeding one year, and that, therefore, it was compulsorily registrable under the provisions of s 17, sub s. 1 (*d*) of the Indian Registration Act (XVI of 1908) DHURABHAI BHULDAS *v* MOHANLAL MAGANLAL (1917) **I. L. R. 41 Bom. 458**

——— ss. 17, 50—

See TRANSFER OF PROPERTY ACT (IV OF 1882) s 54 **I. L. R. 41 Bom. 550**

——— ss. 17, 90—

See LAND REVENUE CODE (BOM ACT V OF 1879), s 74 **I. L. R. 41 Bom. 170**

——— s. 28— *Place of registration—Sale deed—Deed fraudulently registered in a district where none of the property in respect of which it might have been operative, was situated* In order to prevent certain persons interested in the bulk of the property which purported to be sold, and which was in the district of Pilibhit becoming aware of the existence of a sale deed, the vendor included in the deed a small piece of property, situated in the city of Bareilly, which in fact did not belong to him, and had the sale deed registered in Bareilly. *Held*, that this transaction was merely a fraudulent evasion of the Registration law, and that the sale deed conveyed no title to the purchasers in respect of any of the property comprised in it *Harendra Lal Roy Choudhuri* v *Haridasi Debi*, *I L R 41 Calc 972 Jagan Nath* v *Ram Nath, 12 All L J 913, Bansraj Singh* v *Rajbans Bharthi, 12 All L J 918*, and *Purna Chandra Bakshi* v *Nobin Chandra Gangopadhya, 8 C W. N 362*, referred to MANGALI LAL *v* ABID YAR KHAN (1917)
I. L. R. 39 All. 523

——— s. 49—*Mortgage by deposit of title deeds—Agreement to mortgage—Document, containing agreement to mortgage registration of, if necessary—Admissibility of document for any purpose.* Where the plaintiff, who had executed a mortgage by deposit of title-deeds, executed a promissory note to the defendant and agreed that the latter should pay off the mortgage and recover the title-deeds from the mortgagee and retain them himself as additional security, and the terms of the agreement were embodied in two documents which were not registered *Held*, that the documents required to be registered and were inadmissible in evidence in respect of any of the terms contained therein under s. 49 of the Registration Act (XVI of 1908) *Moore* v *Culverhouse, 27 Beav 639; 54 E R 251*, and *Neve* v *Pennell, 2 H. & M. 170*, followed. *Kedarnath*

REGISTRATION ACT (XVI OF 1908)—*concld*

——— s. 49—*concld*

v *Shamloll Khettry, 11 B L R 405*, distinguished SWAMI CHETTY *v* ETHIRAJULU NAIDU (1916)
I. L. R 40 Mad. 547

——— ss 72 (1) 76 and 77 ...

puted A document was presented for registration to the Sub Registrar on the last day of the four months allowed for presentation, but the Sub-Registrar declined to receive it owing to pressure of other work. At the suggestion of the Sub Registrar, it was presented the next day with an application to the Registrar to excuse the delay in presentation. On the refusal of the Registrar to excuse the delay, the Sub Registrar refused to register the document From this order an appeal was f[illegible] missed [illegible] days [illegible] the I[illegible] days after the order refusing to extend time

[illegible] must be counted from the date of the order on appeal and not from the date of the order refusing to extend time. There is no distinction between a refusal to accept a document for registration and a refusal to register it *Narasimha Nayanavaru* v *Ramalingam Rao, 10 Mad L J 104*, and *Sivarama Pattar Kariakar* v *Krishnaiyar, 26 Mad L J 307*, followed. *Kunhimmu* v *Viyyathamma, I L R 7 Mad 535*, distinguished. *Gangava* v *Sayava, I L R 21 Bom 699, Balambal Ammal* v *Arunachala Chetti I L R 18 Mad 255 and Veeramma* v *Abbiah, I L R 18 Mad 99*, not followed. GANGADARA *v* SAMBASIVA (1916) **I. L. R. 40 Mad. 759**

[illegible]

s 82 of the Act. *Gopinath* v *Kuldip Singh, I L R 11 Calc 566* and *Queen Empress* v *[illegible]ithilinga, I L R 11 Mad 500*, referred to [illegible] NADATHI (1917) **I. L. R. 40 Mad. 880**

——— s. 83—

See CRIMINAL PROCEDURE CODE, s 413.
I. L. R. 39 All. 293

REGULATION (VIII OF 1819).

——— ss. 8, 9, 15 (*2*)—

See SALE FOR ARREARS OF RENT
I. L. R. 44 Calc. 715

RELEASE.

——— recitals in—

See VENDOR AND PURCHASER.
I. L. R. 41 Bom. 303

RELIGIOUS ENDOWMENT.

See CIVIL PROCEDU[illegible] 1908), s 92 .

RELIGIOUS ENDOWMENT—*concld.*

See LIMITATION ACT (IX OF 1908), s. 18; SCH. I, ARTS. 124, 144.
I. L. R. 39 All. 636

———————— *Failure of the line of trustees—Right of heirs of founders of the institution to create a new line of trustees.* *Held*, by the Full Bench (SRINIVASA AYYANGAR J. *contra*), that it is competent to an heir of the founder of a shrine, in whom the trusteeship has vested owing to the failure of the line of the original trustees, to create a new line of trustees. *Per* SRINIVASA AYYANGAR, J. In the absence of any such power in the deed of trust, the Court alone has the power to appoint a trustee; such a power of nomination is equivalent to an alienation of the office of trustee which is illegal. GAURANGA SAHU *v.* SUDEVI MATA (1917) . . **I. L. R. 40 Mad. 612**

RELIGIOUS ENDOWMENTS ACT (XX OF 1863).

———— **s. 10**—*Vacancy in Temple Committee—Jurisdiction of District Judge—Civil Procedure Code (Act V of 1908), s. 115—Power of revision by the High Court—Duty of remaining members of the Committee—Failure to perform duty—Election held after expiration of the statutory time.* The High Court has jurisdiction under s. 115 of the Civil Procedure Code, 1908, to revise an order of the District Judge made under s. 10 of the Religious Endowments Act XX of 1863, on the occurrence of a vacancy in a Temple Committee declaring that an election by the remaining members of the Committee to fill up the vacancy was regularly held; and that the appointment of the person was valid. No appeal lay under the Civil Procedure Code from such an order. In making the order the District Court was acting in a judicial capacity as a Court of law, and not merely in an administrative capacity. The matter in which the order of the District Court was made was a "case" within the meaning of s. 115 of the Civil Procedure Code, 1908. A "case" includes an *ex parte* application such as that made in this matter. *Minakshi Nayudu* v. *Subramanya Sastri, I. L. R. 11 Mad. 26; L. R. 14 I. A. 160*, distinguished. On the true construction of s. 10 of Act XX of 1863 the power of the remaining members of the Committee to fill up the vacancy must be exercised within three months from the date of the occurrence of the vacancy. The District Court had no jurisdiction after the expiration of the three months to direct the remaining members of the Committee to fill up the vacancy by election, or to make an order purporting to validate the appointment of the person elected. If the Committee do not perform their duty by holding an election within three months to fill up the vacancy, a subsequent election by the remaining members after the expiration of three months is invalid; and this is so notwithstanding that such a construction would enable the remaining members of the Committee by their own default, to practically disfranchise the electors, and at the discretion of the Court possibly to procure the patronage for themselves. The only remedy for that is to alter the law, if wrong, by legislation. The Board can only declare the law. BALAKRISHNA UDAYAR *v.* VASUDEVA AYYAR (1917) . **I. L. R. 40 Mad. 793**

———— **s. 18**—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 92 . **I. L. R. 40 Mad. 212**

RELIGIOUS OFFICE.

See HINDU LAW SUCCESSION.
I. L. R. 40 Mad. 105

REMAINDERMAN.

See ESTOPPEL . **I. L. R. 44 Calc. 145**

REMAND.

See CIVIL PROCEDURE CODE (1908), O. XLI, R. 23. **I. L. R. 39 All. 165**

See SANCTION FOR PROSECUTION.
I. L. R. 44 Calc. 816

———————— *Appellate Court, power of—Inherent jurisdiction—Correction of omissions or defects in the trial—De novo trial—Civil Procedure Code (Act V of 1908), ss. 107, 151; O. XLI, r. 23.* The power of remand under s. 107 of the Civil Procedure Code is limited to the case described in O. XLI, r. 23, but nothing in that section restricts in any manner the application of the principle of inherent power recognised by s. 151 of the Code. The powers of the Appellate Court as regards remand are thus not restricted to the case specified in O. XLI, r. 23, but the Court, by reason of its inherent jurisdiction, recognised and preserved in the Code, may order a remand in cases other than the case specified in O. XLI, r. 23, if it be necessary for the ends of justice. *Nabin Chandra Tripati* v. *Prankrishna De, I. L. R. 41 Calc. 108*, dissented from. Inherent jurisdiction must be exercised with care, subject to general legal principles and to the condition that the matter is not one with which the Legislature has so specifically dealt as to preclude the exercise of inherent power. *Per* WOODROFFE, *J.*—Whether justice does require a Court to invoke its inherent jurisdiction, must be determined by that Court, with reference to the particular facts of the case, and the rule of law that a Court cannot invoke an inherent jurisdiction where there is a provision in the Code, whether by way of remand or otherwise, which, if applied, will meet the justice of the case. *Per* MOOKERJEE, *J.*—That the Code itself recognises the power of a Court to direct a remand in circumstances other than those specified in O. XLI, r. 23, is clear from the terms of s. 99. The Court of Appeal is invested with plenary powers to correct errors of procedure committed by the trial Court. Where the Court of Appeal is satisfied that the correction of the omission or defects in the trial is not reasonably practicable by recourse to one or other of the provisions mentioned, that is, where it is clearly apparent that the Appellate Court cannot itself satisfactorily dispose of the suit on the merits by the adoption of the specific procedure mentioned in O. XLI, r. 24 to 29, a remand for retrial is not only permissible but obviously incumbent on the Court. GHUZNAVI *v.* THE ALLAHABAD BANK, LTD. (1917) . **I. L. R. 44 Calc. 929**

RENT.

See RENT IN KIND.

See RENT RESERVED.

See AGRA TENANCY ACT (II OF 1901), ss. 4, 167 . **I. L. R. 39 All. 605**

———— **legal right to remission**—

See ESTATES LAND ACT (MAD. ACT I OF 1908), ss. 4, 27, 73, 143.
I. L. R. 40 Mad. 640

RENT DECREE.

1. ———————— *Rent, arrears of—Decree for ejectment for non payment—Act VIII (B C) of 1869, s 52—Decree for ejectment for non payment of arrears of rent—Period of 15 days, if can be extended by executing Court after appeal dismissed* Under s 52 of Act VIII (B C) of 1869, the period of 15 days can only be extended by the Court of first instance at the time of drawing the decree or by the Appellate Court when disposing of the appeal from the decree, but cannot be subsequently extended by the Court executing the decree HUNAI SHEIKH *v* SARAT CHANDRA DUTTA (1917) . . . **21 C. W. N. 749**

dar sued a tenant for previously accrued arrears of rent and recovered a decree and subsequently the putni sale was set aside and the putnidar thereafter applied for execution of the decree by sale of the holding under the Bengal Tenancy Act, but before the sale, the putni was again sold under Reg VIII of 1819 *Held*, that the decree could be executed as a rent decree, the case being covered by the Full Bench decision in *Khetrapal Singh* v *Kritkartha Moyee Dasi, I L R 33 Calc 566 s c 10 C W N 547*, which has not been overruled by the Privy Council in *Forbes* v *Maharaj Bahadur Singh, I L R 41 Calc 926 s c 18 C W N 747*, MANINDRA NATH GHOSH *v* ASHUTOSH GHOSH (1917) **21 C. W. N 1132**

RENT IN KIND

———— conversion of, into money rent—

See HINDU LAW REVERSIONERS **I. L R. 40 Mad. 871**

RENT RECOVERY (UNDER TENURES) ACT (BENG. VIII OF 1865).

———— s. 3—

See SALE FOR ARREARS OF RENT **I. L. R. 44 Calc 715**

RENT RESERVED

See LANDLORD AND TENANT **I. L. R. 44 Calc. 403**

REPRESENTATION.

See HINDU LAW—ALIENATION **I. L. R. 44 Calc. 186**

REPRESENTATIVE.

See CIVIL PROCEDURE CODE, 1908, ss 47, 52 . . **I. L. R. 39 All. 47**

RESERVED RENT.

See TENANCY AT WILL. **I. L. R. 44 Calc. 241**

RESIDENCE.

See SUCCESSION ACT (X OF 1865) ss, 7, 9, 10 . . **I. L. R. Bom. 687**

RES JUDICATA.

See CIVIL PROCEDURE CODE (1908), s 11 **I. L. R. 39 All. 626, 717**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O II, r 2 **I. L. R. 40 Mad. 291**

See JURISDICTION **I. L. R. 44 Calc. 367**

RES JUDICATA—*contd*

See PROVINCIAL INSOLVENCY ACT (III OF 1907), s 22, **I. L. R. 39 All. 353**

1. ———————— *Finding in claim case, if res judicata re other properties—Civil Procedure*

nappa Chetty, I L R 35 Mad 35, distinguished *Radha Prasad Singh* v *Lal Sahab Rai, I L R 13 All 53, Dinkar Ballal Chakradev* v *Hari Shridhar Apte, I L R 14 Bom 206*, referred to ASHNA BIBI *v* AWALJADI BIBI (1916) **I. L. R. 44 Calc. 698**

2. ———————— *Execution of decree—Effect of the decision of an issue in the suit upon a cognate but not precisely similar issue raised in execution proceedings* In a suit for sale on a mortgage the main defence raised was that the mortgagor had no right to mortgage the property in suit inasmuch as it formed part of a grant, originally made by Government, which was in the nature of a political pension and inalienable This defence was accepted, and the Court, refusing

execution *Held*, that the question so raised was not concluded by the finding arrived at in the suit in respect of the property which purported to have been mortgaged to the plaintiffs *Mongalathammal* v *Narayanaswami Aiyar, I L R 30 Mad 461*, and *Aghore Nath Mukerjee* v *Srimati Kamini Debi, 11 C L J 461*, referred to *Held*, that having regard to the substance rather than to the form of the proceedings before the court below, there was in this matter a reference to arbitration by the Court under the earlier paragraphs of the second schedule to the Code of Civil Procedure, and in the circumstances the appeal, which was against the decree based on the award was not maintainable *Nidamarthi Krishnamoorthi* v *Garigiparti Ganapatilingam, 34 Indian Cases 741*, and *Shama Sundram Iyer* v *Abdul Latif, I L R 27 Calc 61*, referred to RAM NANDAN DHAR DUBE *v* KANIZ FATIMA BIBI (1917) **I. L. R. 39 All. 379**

3 ———————— *Finding when res judicata between co-defendants* In order that a finding in a case should be *res judicata* between co defendants three things are necessary (i) that there should be a conflict of interest between co-defendants (ii) that it should be necessary to decide on that conflict in order to give to the plaintiff the relief appropriate to his suit, (iii) that the judgment should contain a decision of the question raised as

RELIGIOUS ENDOWMENT—*concld.*

See LIMITATION ACT (IX OF 1908), s. 18; SCH. I, ARTS. 124, 144. **I. L. R. 39 All. 636**

———— *Failure of the line of trustees—Right of heirs of founders of the institution to create a new line of trustees. Held*, by the Full Bench (SRINIVASA AYYANGAR J. *contra*), that it is competent to an heir of the founder of a shrine, in whom the trusteeship has vested owing to the failure of the line of the original trustees, to create a new line of trustees. *Per* SRINIVASA AYYANGAR, J. In the absence of any such power in the deed of trust, the Court alone has the power to appoint a trustee; such a power of nomination is equivalent to an alienation of the office of trustee which is illegal. GAURANGA SAHU *v.* SUDEVI MATA (1917) . . **I. L. R. 40 Mad. 612**

RELIGIOUS ENDOWMENTS ACT (XX OF 1863).

———— **s. 10**—*Vacancy in Temple Committee—Jurisdiction of District Judge—Civil Procedure Code (Act V of 1908), s. 115—Power of revision by the High Court—Duty of remaining members of the Committee—Failure to perform duty—Election held after expiration of the statutory time.* The High Court has jurisdiction under s. 115 of the Civil Procedure Code, 1908, to revise an order of the District Judge made under s. 10 of the Religious Endowments Act XX of 1863, on the occurrence of a vacancy in a Temple Committee declaring that an election by the remaining members of the Committee to fill up the vacancy was regularly held; and that the appointment of the person was valid. No appeal lay under the Civil Procedure Code from such an order. In making the order the District Court was acting in a judicial capacity as a Court of law, and not merely in an administrative capacity. The matter in which the order of the District Court was made was a "case" within the meaning of s. 115 of the Civil Procedure Code, 1908. A "case" includes an *ex parte* application such as that made in this matter. *Minakshi Nayudu* v. *Subramanya Sastri, I. L. R. 11 Mad. 26; L. R. 14 I. A. 160*, distinguished. On the true construction of s. 10 of Act XX of 1863 the power of the remaining members of the Committee to fill up the vacancy must be exercised within three months from the date of the occurrence of the vacancy. The District Court had no jurisdiction after the expiration of the three months to direct the remaining members of the Committee to fill up the vacancy by election, or to make an order purporting to validate the appointment of the person elected. If the Committee do not perform their duty by holding an election within three months to fill up the vacancy, a subsequent election by the remaining members after the expiration of three months is invalid; and this is so notwithstanding that such a construction would enable the remaining members of the Committee by their own default, to practically disfranchise the electors, and at the discretion of the Court possibly to procure the patronage for themselves. The only remedy for that is to alter the law, if wrong, by legislation. The Board can only declare the law. BALAKRISHNA UDAYAR *v.* VASUDEVA AYYAR (1917) . **I. L. R. 40 Mad. 793**

———— **s. 18**—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 92 . **I. L. R. 40 Mad. 212**

RELIGIOUS OFFICE.

See HINDU LAW SUCCESSION. **I. L. R. 40 Mad. 105**

REMAINDERMAN.

See ESTOPPEL . **I. L. R. 44 Calc. 145**

REMAND.

See CIVIL PROCEDURE CODE (1908), O. XLI, R. 23. **I. L. R. 39 All. 165**

See SANCTION FOR PROSECUTION. **I. L. R. 44 Calc. 816**

———— *Appellate Court, power of—Inherent jurisdiction—Correction of omissions or defects in the trial—De novo trial—Civil Procedure Code (Act V of 1908), ss. 107, 151; O. XLI, r. 23.* The power of remand under s. 107 of the Civil Procedure Code is limited to the case described in O. XLI, r. 23, but nothing in that section restricts in any manner the application of the principle of inherent power recognised by s. 151 of the Code. The powers of the Appellate Court as regards remand are thus not restricted to the case specified in O. XLI, r. 23, but the Court, by reason of its inherent jurisdiction, recognised and preserved in the Code, may order a remand in cases other than the case specified in O. XLI, r. 23, if it be necessary for the ends of justice. *Nabin Chandra Tripati* v. *Prankrishna De, I. L. R. 41 Calc. 108*, dissented from. Inherent jurisdiction must be exercised with care, subject to general legal principles and to the condition that the matter is not one with which the Legislature has so specifically dealt as to preclude the exercise of inherent power. *Per* WOODROFFE, *J.*—Whether justice does require a Court to invoke its inherent jurisdiction, must be determined by that Court, with reference to the particular facts of the case, and the rule of law that a Court cannot invoke an inherent jurisdiction where there is a provision in the Code, whether by way of remand or otherwise, which, if applied, will meet the justice of the case. *Per* MOOKERJEE, *J.*—That the Code itself recognises the power of a Court to direct a remand in circumstances other than those specified in O. XLI, r. 23, is clear from the terms of s. 99. The Court of Appeal is invested with plenary powers to correct errors of procedure committed by the trial Court. Where the Court of Appeal is satisfied that the correction of the omission or defects in the trial is not reasonably practicable by recourse to one or other of the provisions mentioned, that is, where it is clearly apparent that the Appellate Court cannot itself satisfactorily dispose of the suit on the merits by the adoption of the specific procedure mentioned in O. XLI, r. 24 to 29, a remand for retrial is not only permissible but obviously incumbent on the Court. GHUZNAVI *v.* THE ALLAHABAD BANK, LTD. (1917) . **I. L. R. 44 Calc. 929**

RENT.

See RENT IN KIND.

See RENT RESERVED.

See AGRA TENANCY ACT (II OF 1901), ss. 4, 167 . **I. L. R. 39 All. 605**

———— **legal right to remission**—

See ESTATES LAND ACT (MAD. ACT I OF 1908), ss. 4, 27, 73, 143. **I. L. R. 40 Mad. 640**

RENT DECREE.

1. ———— *Rent, arrears of—Decree for ejectment for non payment—Act VIII (B C) of 1869, s 52—Decree for ejectment for non payment of arrears of rent—Period of 15 days, if can be extended by executing Court after appeal dismissed* Under s 52 of Act VIII (B C) of 1869, the period of 15 days can only be extended by the Court of first instance at the time of drawing the decree or by the Appellate Court when disposing of the appeal from the decree, but cannot be subsequently extended by the Court executing the decree HUNAI SHEIKH v SARAT CHANDRA DUTTA (1917) . . . 21 C. W. N. 749

2. ———— *Rent decree obtained*

dar sued a tenant for previously accrued arrears of rent and recovered a decree and subsequently the putni sale was set aside and the putnidar thereafter applied for execution of the decree by sale of the holding under the Bengal Tenancy Act, but before the sale, the putni was again sold under Reg VIII of 1819 *Held*, that the decree could be executed as a rent decree, the case being covered by the Full Bench decision in *Khetrapal Singh* v *Kritthartha Moyee Dasi, I L R 33 Calc*

2

RENT IN KIND.

———— conversion of, into money rent—

See HINDU LAW REVERSIONERS
I. L R 40 Mad. 871

RENT RECOVERY (UNDER TENURES) ACT (BENG. VIII OF 1865).

———— s. 3—

See SALE FOR ARREARS OF RENT
I L. R 44 Calc. 715

RENT RESERVED.

See LANDLORD AND TENANT
I. L. R. 44 Calc. 403

REPRESENTATION.

See HINDU LAW—ALIENATION
I. L R. 44 Calc. 186

REPRESENTATIVE.

See CIVIL PROCEDURE CODE, 1908, ss 47, 52 I. L. R. 39 All. 47

RESERVED RENT.

See TENANCY AT WILL
I. L. R. 44 Calc 241

RESIDENCE.

See SUCCESSION ACT (X OF 1865) ss, 7, 9, 10 . I. L. R. Bom. 687

RES JUDICATA.

See CIVIL PROCEDURE CODE (1908) s 11
I. L. R. 39 All. 626, 717

See CIVIL PROCEDURE CODE (ACT V OF 1908), O II, R 2
I. L. R 40 Mad. 291

See JURISDICTION
I. L. R 44 Calc. 367

RES JUDICATA—*contd*

See PROVINCIAL INSOLVENCY ACT (III OF 1907), s 22 I. L R. 39 All. 353

1. ———— *Finding in claimcase, if res judicata re other properties—Civil Procedure Code (Act V of 1908), O XXI, r 63, effect of—Wakf, validity of* Properties A and B are included in an alleged wakf The finding in a claim case regarding A that the wakf is a fraudulent transaction is not conclusive in a suit for declaration and possession regarding a share in B An

I L R 29 Mad 225, Ramu Aiyar v *A L Palaniappa Chetty, I L R 35 Mad 35*, distinguished *Radha Prasad Singh* v *Lal Sahab Rai, I L R 13 All 53, Dinkar Ballal Chakradev* v *Hari Shridhar Apte, I L R 14 Bom 206*, referred to ASHNA BIBI v AWALJADI BIBI (1916)
I. L. R. 44 Calc. 698

2. ———— *Execution of decree—Effect of the decision of an issue in the suit upon a cognate but not precisely similar issue raised in execution proceedings* In a suit for sale on a mortgage the main defence raised was that the mortgagor had no right to mortgage the property in suit, inasmuch as it formed part of a grant, originally made by Government, which was in the nature of a political pension, and inalienable This defence was accepted, and the Court, refusing to make a decree on the mortgage, gave the plaintiffs a money decree only In execution of this money decree the plaintiffs decree holders sought to attach certain property of the judgment debtors not being part of the property included in their

execution *Held*, that the question so raised was not concluded by the finding arrived at in the suit in respect of the property which purported to

Garigiparti Ganapatilingam, 34 Indian Cases 741, and *Shama Sundram Iyer* v *Abdul Latif, I L R 27 Calc 61*, referred to. RAM NANDAN DHAR DUBE v KANIZ FATIMA BIBI (1917)
I. L. R. 39 All. 379

relief appropriate to his suit, (iii) that the judgment should contain a decision of the question raised as

RES JUDICATA—*concld.*

between co-defendants. JADAV CHANDRA SIRKAR *v.* KAILASH CHANDRA SING (1916)
21 C. W. N. 693

RESTORATION.

See SMALL CAUSE COURT SUIT.
I. L. R. 44 Calc. 950

RESUMPTION.

See RESUMPTION BY GOVERNMENT.

See RESUMPTION OF SARANJAM.

RESUMPTION AND ENFRANCHISEMENT.

——— of personal or service inams, distinction between—

See CHARITABLE INAMS.
I. L. R. 40 Mad. 939

RESUMPTION BY GOVERNMENT.

See CHAUKIDARI CHAKARAN LANDS.
I. L. R. 44 Calc. 841

RESUMPTION OF MUAFI.

See AGRA TENANCY ACT (II OF 1901), s. 158 . . I. L. R. 39 All. 689

RESUMPTION OF SARANJAM.

See SARANJAM . I. L. R. 41 Bom. 408

REVENUE SALE LAW.

See SALE FOR ARREARS OF REVENUE.

REVERSAL OF JUDGMENT.

——— *Effect of, on connected and dependent orders—Restitution of money taken away by decree-holder in execution of decree under erroneous decision on question of limitation—Restitution, if must be with interest—Limitation Act (IX of 1908), Art. 181.* The decree-holders made an application for execution of a decree by attachment and sale of moveables, which was opposed by the judgment-debtors on the ground of limitation. The objection was treated as a separate case. While this application for execution was pending, the decree-holders made a fresh application for execution to attach funds in Court standing to the credit of two of the judgment-debtors. This application was treated as a separate proceeding. The objection case was decided against the judgment-debtors and the Court thereupon made an order in the second execution case directing the decree-holders to take steps. Then on the decree-holders' application payment of the fund in deposit in Court was ordered. An appeal was preferred to the High Court in the objection case but none against the payment order. This appeal was decreed and the High Court directed that any sums taken by the decre[illegible]ders under the order of the [illegible]low must [illegible] at once. The judgn[illegible] whose [illegible] been taken awa[illegible]ree-h[illegible] plied to the Cou[illegible] t it is a general [illegible] ment, orde[illegible] judgments [illegible] ments subs[illegible] although th[illegible] to set aside or proceedin[illegible] litigation. [illegible] ancillary to [illegible] cancellat[illegible]

REVERSAL OF JUDGMENT—*concld.*

by the High Court in appeal involved by necessary implication a cancellation of the consequential payment order. The judgment-debtors were therefore entitled to restitution even though they did not formally appeal against the payment order. That the only Article of the Limitation Act which may possibly apply to an application by the judgment-debtors for restitution is Art. 181 and the period of three years provided therein commences from the date when the erroneous order is set aside. That restitution must be made of the sum withdrawn together with interest thereon at 6 per cent. per annum. ASUTOSH GOSWAMI *v.* UPENDRO PROSAD MITRA (1916) . . 21 C. W. N. 564

REVERSIONER.

See HINDU LAW—ADOPTION.
I. L. R. 40 Mad. 846

See HINDU LAW—WIDOW.
I. L. R. 39 All. 1, 520

——— claim by—

See HINDU LAW—INHERITANCE.
I. L. R. 40 Mad. 654

——— suit by—

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 118 . I. L. R. 41 Bom. 728

REVIEW.

See COUNTERFEIT COIN.
I. L. R. 44 Calc. 477

See PRACTICE . I. L. R. 44 Calc. 28

See SMALL CAUSE COURT SUIT.
I. L. R. 44 Calc. 950

——— application for—

See LIMITATION . L. R. 44 I. A. 218

1.——— *Application for review subsequent to filing of second appeal—Civil Procedure Code (Act V of 1908), s. 114; O. XLVII, r. 1.* Where an application for review of judgment is filed and later, during the pendency of the same, an appeal is preferred: *Held*, that the Court has power and in fact is bound to proceed with the application for review of judgment notwithstanding the fact that an appeal has been subsequently filed. But the power exists so long as the appeal is not heard. *Bharat Chundra Mazumdar v. Ramgunga Sen, (1866) B. L. R. (F. B.) 362, Chenna Reddi* v. *Peddaobi Reddi, I. L. R. 32 Mad. 416*, followed. *Thacoor Prosad* v. *Baluck Ram, 12 C. L. R. 64, Sarat Chandra Dhal* v. *Damodar Manna, 12 C. W. N. 885, Narayan Purushottam Gargote* v. *Laxmibai, I. L. R. 38 Bom. 416*, referred to. On the other hand, if the application is successful, the appeal cannot proceed. *Kanhaiya Lal* v. *Baldeo Prasad, I. L. R. 28 All. 240*, referred to. PYARI MOHAN KUNDU *v.* KALU KHAN (1917) . . I. L. R. 44 Calc. 1011

2. ——— *Appeals under clause 15 of the Letters Patent—Petitions for review in, [illegible]ability of.* It is competent to the High [illegible] review judgments in appeals preferred [illegible] 15 of the Letters Patent. VENKATA- [illegible] *v.* SRI RAJAH KRISHNA YACHEN- [illegible]BAHADUR (1915)
I. L. R. 40 Mad. 651

[illegible] *Principle on which a [illegible]nted when new facts are alleged [illegible]d—Civil Procedure Code (Act*

REVIEW—*concld*

proof" means ... of the law and of the quantur ... LAL MULLIK v ...
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REVISION
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See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s 439 I. L. R. 41 Bom. 560
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———— suit for—
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———— right of Government to buy—
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S

SALE
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See CONSTRUCTION OF DOCUMENT I. L. R. 41 Bom. 5
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See INSOLVENCY I. L. R 44 Calc. 1016
See LAND REVENUE CODE (BOM ACT V OF 1879), s 74 I. L. R 41 Bom. 170

SALE BY GOVERNMENT.
See WASTE LANDS ACT, 1863, s 18 I. L R. 44 Calc. 328

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———— **for a low value, from client—**
See PROFESSIONAL MISCONDUCT I. L. R. 40 Mad. 69

SALE FOR ARREARS OF RENT.
———— *Purchase of putni—Opposition to purchaser's possession—Application for proclamation—The District Judge or the Collector, the proper authority to issue proclamation—Rent Recovery (Under Tenures) Act (Beng VIII of 1865), s 3—Repealing Act (XVI of 1874)—Regulations VIII of 1819, ss 8, 9, 15 (2); I of 1820 and VII of 1832, s 16* Cl (2) of s 15 of Regulation VIII of 1819 has not been affected by s 3 of Beng Act VIII of 1865 Proceedings taken to annul the sale of certain *putni* lands sold for arrears of rent having terminated in favour of the purchaser and the sale having become final and conclusive, the purchaser in attempting to realise the rents from the cultivators of the lands comprised in the tenure purchased by him was opposed in his attempt by some of the intermediate holders who claimed interest between the late *putnidar* and the cultivators Thereupon, he applied to the District Judge to issue a proclamation under s 15 of the *Putni Reg VIII of 1819* The District Judge returned the application and directed that it should be made to the Collector who was the proper authority to issue the proclamation *Held*, that the view taken by the District Judge was erroneous and that he had failed to exercise the jurisdiction still vested in him by law under cl. (2) of s 15 of the Putni Reg VIII of 1819 MANMATHA NATH MITTER v DISTRICT JUDGE, 24 PARGANAS (1916) I. L. R. 44 Calc. 715

SALE FOR ARREARS OF REVENUE.
1. ———— *Act XI of 1859—Co owners of a share of estate subject to usufructuary mortgage—Mortgagee in possession, undertaking by, to pay revenue—Default deliberately made by agents of minor mortgagee—Purchase at sale for arrears by mortgagee's agents—Benami purchase—Fiduciary relation between mortgagee and mortgagors—Suit by other co owners to set aside sale—Terms on recovery of property—Contribution towards expenses properly incurred by*

SALE FOR ARREARS OF REVENUE—*contd.*

mortgagee—Duty of counsel in ex parte case—Privy Council, practice of. Of a 12 annas share of a revenue-paying estate, a 3 annas share belonged to the plaintiffs (respondents) subject to a usufructuary mortgage of that share for the benefit of the defendant (appellant) a minor who, as mortgagee in possession, undertook (as was stipulated in the mortgage deed) to pay the revenue to Government for the mortgaged share. The remaining nine annas belonged to others of the plaintiffs. In June 1905, a sum of Rs. 3, annas 6 in excess of the quota payable was paid on the mortgagee's behalf by his agents. In September 1906, only Rs. 9 instead of Rs. 12 was so paid, and that left a balance owing which in due course amounted to an arrear within the meaning of Act XI of 1859 and to recover this arrear the 12 annas estate was sold by the Collector on 25th March 1907 and purchased by the agents benami on behalf of the mortgagee defendant. The High Court, reversing the judgment of the Subordinate Judge who had dismissed the suit, found that the purchase was fraudulent, while their Lordships of the Judicial Committee acquitted the minor of any personal misconduct in relation to the default or sale, and were of opinion that regarding the position as a whole it led to the conclusion that the revenue was intentionally allowed by the agents to fall into arrear with a view to the property being put up for sale and bought on behalf of the minor. *Held*, that the arrear which occasioned the sale was due to the insufficient payment made in respect of the three annas share, and this was none the less the result of the default of those interested in that share because an excess payment had been made in June 1903; that had been long absorbed and had ceased to be an excess credit in the touji ledger. However free from personal blame the minor may have been, he could not profit by his agents' deliberate default committed in breach of the terms of his mortgage. As against his mortgagors, therefore, the mortgagee could not be allowed to hold for himself any advantage gained by the default for which his agents were responsible, nor could he be permitted to hold such advantage to the prejudice of the co-owners. *Doorga Singh* v. *Sheo Pershad Singh, I. L. R. 16 Calc. 194*, dissented from. *Faizer Rahman* v. *Maimuna Khatun, 17 C. W. N. 1233*, approved. The mortgagee here through his representatives had a duty to perform which was inconsisent with his becoming a purchaser in the way he did; his title, therefore, could not operate to the exclusion of his co-owners. It was no answer to say that Act XI of 1859 contemplates a purchase by a co-sharer. The sale would stand, but under the circumstances the transaction was in effect nothing more than payment of an arrear for the benefit of all. But that gave a right to contribution so that it must be a term of granting the plaintiff's equitable relief that they should contribute to the expenses properly incurred by or for the mortgagee in the purchase of the property. Where an appeal is heard *ex parte* it is the duty of counsel to bring to the notice of the Board adverse as well as favourable authorities. DEO NANDAN PRASHAD *v.* JANKI SINGH (1916)

I. L. R. 44 Calc. 573

2. ———————— *Defaulter—Assam Land Revenue Regulation (I of 1886), ss. 63, 67, 85—Limitation—Limitation Act (IX of 1908), Sch. 1, Arts. 121, 142.* Where persons are in actual possession of a part of the estate sold for arrears of revenue under the Assam Land and Revenue Regulation they are defaulters by reason of s. 67. *Aftar Ali* v. *Brojendra Kishore Roy Chowdhury, 24 C. L. J. 60*, referred to. A suit for recovery of possession brought within 12 years from the date on which the Collector gave symbolical possession to the purchasers, is within time. *Mozuffer Wahid* v. *Abdus Samad, 6 C. L. R. 539*, followed. S. 63 cannot be construed as restricted to persons who *profess* to hold the land as included in the estate sold for arrears of revenue. MAHIM CHANDRA CHOWDHURY *v.* PIYARI LAL DAS (1916) . . . **I. L. R. 44 Calc. 412**

SALE IN EXECUTION OF DECREE.

———————— *Decree against father of joint mitakshara family—Suit by sons the other members of the family to have it declared that their shares were not affected by the sale under mortgage decree—"Right, title and interest" of judgment-debtor—Substance and not technicalities of transaction to be regarded in cases of this kind.* In execution of a mortgage decree against the father of a joint mitakshara family who alone was a party to the mortgage, the decree and the execution proceedings, his two sons, the other members of the family, objected that only one-third of a patni taluk forming the joint family property could be sold, on the allegation that the debts in respect of which the decree had been made were contracted for illegal and immoral purposes, and the order for sale was amended by adding the words "right, title and interest" of the judgment-debtor as indicating what was to be sold, which expression the Court said was not calculated to affect the case of either party. The property was sold and purchased by the decree-holder. In a suit by the sons to have it declared that only one-third of the property passed by the sale, both Courts in India found that the debts were for legal and necessary purposes. The Subordinate Judge made a decree in the plaintiffs' favour which was reversed by the High Court on appeal. *Held* (affirming the decision of the High Court), that the proper construction of the order for sale, as amended, was that, if the plaintiffs succeeded in establishing that the debts had been incurred for immoral purposes, only one-third of the property would be affected by the sale, while if they failed in that contention the whole of the property would be held to have passed by the sale. The expression "right, title and interest" did not limit what was to be sold to a one-third share. In cases of this kind the substance, and not the mere technicalities of the transaction, should be regarded. *Mahabir Pershad* v. *Moheswar Nath Sahai, I. L. R. 17 Calc. 584; L. R. 17 I. A. 11*, followed. SRIPAT SINGH DUGAR *v.* PRODYOT KUMAR TAGORE (1916) . **I. L. R. 44 Calc. 524**

SALE OF GOODS.

See CIVIL PROCEDURE CODE (1908), s. 20.

I. L. R. 39 All. 368

SALE OF IMMOVEABLE PROPERTY.

———————— *Agreement by vendee to pay revenue—Reservation of portion out of property sold—Agreement not binding on transferee.*

SALE OF IMMOVEABLE PROPERTY—*concld*

The vendor of a village reserved for her main tenance 196 bighas, and the vendee also agreed not to ask for rent of those 196 bighas Vendee further did not insist upon payment of the pro portionate share of Government revenue due from the vendor, but paid it himself *Held*, that any
as between
the paymei
personal matter and could not bind the vendee after the death of the vendor when the land was in the possession of her legatee *Sri Thakurji Maharaj* v *Lachmi Narayan, 11 All L J 212 Ram Gobind* v *Sri Thakurji Maharaj, 11 All L J 231*, and *Ali Hussain* v *Hakim ullah, I L R 38 All 230*, referred to PACHAN SINGH *v* JANGJIT SINGH (1916) . . **I. L. R. 39 All. 166**

SANCTION FOR PROSECUTION.

See APPEAL, RIGHT OF
I. L. R. 44 Calc. 804

See CRIMINAL PROCEDURE CODE, s 195
I. L. R. 39 All. 147, 657

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s 195, SUB s (6)
I. L. R 41 Bom. 631

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901) s 18
I. L. R. 39 All. 297

1. ——————— *False information to the police followed by a complaint to the Magistrate on the same facts and the same charge—Complaint investigated by the Magistrate—Necessity of sanction to prosecute informant only in respect of the false charge to the police—Criminal Procedure Code (Act V of 1898) s 195 (1) (b)* Where an informa tion to the police is followed by a complaint to the Court, based on the same allegations and the same charge, and such complaint has been investi gated by the Court, the sanction or complaint of the Court itself is necessary even for a pro secution of the informant under s. 211 of the Penal Code, in respect of the false charge made to the police. *Tayebullah* v *King Emperor, 24 C L J 134, I L R 43 Calc 1152*, approved *Putiram Ruidas* v. *Mahomed Kasem, 3 C W N 33*, discussed *Jadu Nandan Singh* v *Emperor, I L R 37 Calc 250, distinguished Emperor* v *Harduar Pal, I L R 34 All 522*, referred to BROWN *v* ANANDA LAL MULLICK (1916)
I. L. R. 44 Calc. 650

2. ——————— *High Court Jurisdiction of—Practice—Procedure—Suit in the Presidency Small Cause Court—Statement made in the course of a judicial proceeding—Sanction refused by Presidency Small Cause Court—Revision by single Judge sitting on the Original Side of High Court—Remand—Powers of the Chief Justice to remit case for retrial by Division Bench of High Court—Civil Procedure Code (Act V of 1908), s 115—Criminal Procedure Code (Act V of 1898) ss 195 (6) and (7) (c), 435 and 439—High Court Rules, Appellate Side, Chapter II, rule V* The assistance of a Judge of a High Court can, in a matter of sanction to prosecute from the Presidency Small Cause Court, be invoked only under s 195 (6) of the Criminal Procedure Code Under that provision the only order which such a Judge is competent to pass is to revoke a sanction given or grant a sanction refused by the

SANCTION FOR PROSECUTION—*concld*

Subordinate Court He has no jurisdiction to remand the case to the Small Cause Court for further enquiry Under the Rules of Court (Chap II, r V) he would have such jurisdiction if this were a matter under s 115 of the Civil Procedure Code, but as it falls within s 195 (6) of the Criminal Procedure Code, it can be decided only by a Judge

the order of the Subordinate Court BUDHU LAL *v* CHATTU GOPE (1916) . **I. L. R. 44 Calc. 816**

3. ——————— *"Produced" meaning of—Document called for by a party and brought into Court and referred to by his pleader and the Court—Antecedent forgery and user before the Sub Registrar—Subsequent production of document in Court—Necessity of sanction—Criminal Procedure Code (Act V of 1898), s 195 (1) (c)* Where a document was called for by a party to a proceeding under s 145 of the Criminal Procedure Code, brought into Court and referred to by his pleader in argument and by the Magistrate in his judgment, though he expressly refrained from any opinion, as to its authenticity —*Held*, that the document was "produced" in the proceeding within the meaning of s 195 (1) (c) of the Code *Guru Charan Shaha* v *Girija Sundari Dassi, I L R 29 Calc 887, Akhil Chandra De* v. *Queen Empress, I L R 22 Calc 1004, Sew Bollok Singh* v *Ramdhin Bania, 14 C W N 806*, and *In re Gopal Sidheshuar, 9 Bom L R 735*, referred to Where before complaint made, a document has been produced in a Court by a party to a proceed. ing before it, the sanction of such Court is neces sary for his prosecution in respect of an antecedent

Noor Mahomed Cassum v *Kaikhosru Manickjee, 4 Bom L R 268*, dissented from NALINI KANTA LAHA *v* ANUKUL CHANDRA LAHA (1917)
I. L. R. 44 Calc. 1002

4. ——————— *Propriety of process under s 500, Penal Code—Discharge—Acquittal—Penal Code (Act XLV of 1860), ss 211, 500—Criminal Procedure Code (Act V of 1898), s 195* Where an offence though described as an offence under s. 500 of the Penal Code, still remains an offence "punishable under s 211 Process should not issue under the former section on the application of a person discharged or acquitted, when the Court has refused saction under the latter section PRAFULLA KUMAR GHOSE *v* HARENDRA NATH CHATTERJEE (1916) **I. L. R. 44 Calc 970**

SANTAN.

——————— Means issue generally and is not limited to male issue KUMUD KRISHNA MANDAL *v* JOGENDRO NATH SARKAR (1917)
21 C W. N. 854

SARANJAM.

——————— *Grant of royal share of revenue—Resumption of Saranjam—Lands can be still held on payment of assessment—Suit to recover possession of land—Revenue Jurisdiction Act (X of 1876), s 4—Pensions Act (XXIII of 1871), s 4* It is well established that in the case of Saranjam or Jaghir (the terms being convertible) the grant s

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*

——— s. 39—*concld.*

tainable, inasmuch as it is a suit of the nature indicated by s. 39 of the Specific Relief Act. The endorsement, fraudulently obtained, is by itself a document and is similar to the several parts of a document indicated in s. 40 of the said Act. To such a suit section 42 of the Act does not apply. RAM CHANDAR *v.* GANGA SARAN (1916)
I. L. R. 39 All. 103

——— **Ch. VI, s. 42—**

COURT-FEE . **I. L. R. 44 Calc. 352**

——— s. 45—*University of Madras—Senate and the Syndicate, respective powers of—Regulation 64 of the Madras University Regulations providing for protests to Government, when ultra vires—Refusal of Syndicate to send protest to Government—Application for an order against Syndicate—Syndicate, a "public officer" protestor, "an injured person" and by-law, a "law for the time being" within s. 45—"Other specific and adequate remedy" in s. 45, meaning of—Substance and not form of protest and resolution, to be looked at.* In granting an application for an order under s. 45 of the Specific Relief Act filed by a Fellow of the Madras University against the Syndicate thereof for the purpose of compelling the Syndicate to forward to the Government a protest of his under Regulation 64 of the University Regulations against a resolution of the Senate. *Held*, under the Madras University Act of 1857 and the Indian Universities Act of 1904, that the Senate of the Madras University is the legislative and the Syndicate the executive government of the University. The scheme of the Acts is that general rules (called regulations) framed as to matters within the competence of the University are to be made by the Senate, in some cases with the sanction of the Government, and that the Syndicate's powers are purely executive and limited to the application of those rules to the facts and exigencies of particular cases as they arise. No sanction of Government is required for the Syndicate's application of the general rules made by the Senate and the Syndicate is entitled to make its own standing orders, and subject to the Regulations of the University, to regulate its business without the sanction of the Senate. The Syndicate can bring forward regulations for adoption by the Senate. Such being the relative powers of these two bodies, a power given to the University by s. 3 of the Universities Act VIII of 1904 to appoint University Professors and Lecturers and a specific power given by s. 25 of the Act to the Senate of the University to make regulations subject to the sanction of the Government for the appointment and duties of the University Professors and Lecturers are exercisable only by the Senate and not by the Syndicate. Such a power cannot be included within the administrative or ministerial powers of the Syndicate which it is competent to exercise without the approval of the Senate. A regulation or a proposal brought forward by the Syndicate in respect of such a matter for the approval of the Senate becomes on adoption by the Senate a regulation or a resolution of the Senate itself, and as such liable to be submitted for the approval of the Government. Being entitled to make regulations consistent with the Act, the Senate has power to make a regulation providing for a protest to Government, by a Fellow of the University against any resolution of the Senate in such a matter and if, under such a regulation, the Syndicate is liable eventually to submit the protest for the consideration and orders of the Government, the Syndicate has no power or discretion to refuse to send the protest, and the person protesting is on any such refusal entitled to obtain from the High Court an order in the nature of a mandamus compelling the Syndicate to submit the protest to the Government. *Held*, further, that the Syndicate of the Madras University is a statutory body of persons holding a "public office" within the meaning of s. 45 of the Specific Relief Act though no emoluments are attached to that office. Where a statute appoints a body of persons to carry out purposes of public benefit the persons constituting such a body *ipso facto* become holders of a "public office." The person protesting is entitled to the relief sought for, as an "injured" person within the meaning of s. 45 (*a*), even though there may be others equally entitled to protest in the same matter. The regulation of the Senate providing for the protest, being made under the powers given by the statute, has the force of law and it is "a law for the time being" within s. 45 (*b*). A regulation of the Senate providing for protests to Government in respect of all its resolutions will be *ultra vires* in respect of those which do not under the Act require the sanction for the Government. What in fact and substance is a resolution of the Senate amounting to a regulation passed after due notice, must be deemed to be so, however differently it may have been described. A document which in form and substance is a protest against a resolution is none the less a protest because it contains arguments against the validity of certain incidental matters leading to the passing of the resolution. The word "resolution" in Regulation 24, means only "regulation." *Per* KUMARASWAMI SASTRIYAR, *J.*—The proper course in applying for a mandamus against a statutory body is to take proceedings against the body as such in its official designation and not against each of the individuals composing the body. The fact that an applicant for a mandamus has other remedies, is no bar to its issue unless they amount to "other specific and adequate remedy" which means "equally convenient, speedy, beneficial and effectual remedy." "Other specific and adequate remedy" in s. 45 (*d*) relate to a *remedium juris* and not a remedy by the act of party. *In re* G. A. NATESAN AND K. B. RAMANATHAN (1916) . **I. L. R. 40 Mad. 125**

STAMP ACT (II OF 1899).

——— **s. 2 (*10*), Sch. I, Art. 5, cl. (c)—**

See HIRE-PURCHASE AGREEMENT.
I. L. R. 44 Calc. 72

——— s. 33 (*1*)—*Impounding of document insufficiently stamped—Conditions necessary for the application of section—Suit for money on hatchitta produced in Court in bound volume containing other hatchittas—Jurisdiction of Court to impound those other hatchittas.* In a suit for recovery of money on a *hatchitta*, the plaintiff filed along with the plaint the *hatchitta* which was in a bound volume which contained a large number of *hatchittas* executed by other persons in favour of the plaintiffs. The *hatchitta* on which the suit was brought being found to be insufficiently stamped, the Munsif examined the other *hatchittas* and impounded them under s. 33 of the Stamp Act finding them to be insufficiently stamped. *Held*, that under s. 33

STAMP ACT (II OF 1899)—*concld*

——— **s. 33**—*concld*

the Munsif had no jurisdiction to impound the *hatchittas* other than the one which formed the basis of the suit Before action can be taken under sub s 1 of s 33, it must be established that

be said that the *hatchittas* were produced or came before the Munsif in the performance of his functions SASHI MOHAN SHAHA v KUMUD KUMAR BISWAS (1916) **21 C. W. N. 246**

——— **s. 62 (b), (c)**—*Proposal for loan in prescribed form of Bank and approval thereof by Manager if constitutes an agreement which should bear eight annas stamp—Intent to defraud Government* A certain local Bank received an application for a loan of Rs 50 in its prescribed form This application contained in the usual column

which the Applicant and the guarantor were silent Both the Manager and the Secretary of the Bank were prosecuted and the Manager was convicted under s 62 (*b*) and the Secretary under s 68 (*c*) of the Stamp Act *Held*, that the statements in the proposal made by the Applicant himself and by the Manager did not represent a completed agreement, more particularly with regard to the rate of interest At most they represented merely negotiations intended to lead up to the execution of a bond and the payment thereon of the amount of the loan, and the conviction of the Manager under s 62 (*b*) of the Stamp Act could not be maintained That the conviction of the Secretary under s 68 (*c*) was also not sustainable as no intention to defraud Government was made out RAJESHWAR BAGCHI v KING EMPEROR (1917) **21 C. W. N. 758**

——— **ss 64 (c), 68**—

See STAMP DUTY **I. L. R. 44 Calc. 321**

STAMP DUTY.

See HIRE PURCHASE AGREEMENT **I. L. R. 44 Calc. 72**

——— *Mere fact of putting a stamp not of proper value, whether an offence—Stamp Act (II of 1899), ss 64, cl (c), 68—Intention*

the mere fact that a person puts a stamp on a document which he knows to be not of proper value would not come within cl. (*c*) of s 64, unless there is an intention to defraud the Government *Queen Empress* v *Somasundaram Chetti, I L R 23 Mad 155*, referred to CHHAKMAL CHOPRA v EMPEROR (1916) . . . **I. L. R. 44 Calc. 321**

STATUTES.

——— **5 & 6 Geo. V, cap. LXI**—

——— **s. 107**—

See CIVIL PROCEDURE CODE (1908), s 115 . . **I. L. R. 39 All. 254**

STATUTES, CONSTRUCTION OF.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O XXI, R 93 **I. L. R. 40 Mad. 1009**

STAY OF PROCEEDINGS.

——— **against an insolvent**—

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), s 18 (3) **I. L. R. 41 Bom. 312**

STRAITS SETTLEMENTS BANKRUPTCY ORDINANCE.

See BANKRUPTCY **I. L. R. 40 Mad. 581**

STREET.

——— **vesting of**—

See MUNICIPALITY **I. L. R. 44 Calc. 689**

STRIDHANA.

——— **non-technical**—

See HINDU LAW—STRIDHAN **I. L. R. 41 Bom. 618**

SUBSTITUTION OF NAMES.

See CIVIL PROCEDURE CODE (1908), O XXII, R 4 . **I. L. R. 39 All. 551**

SUCCESSION.

See CUSTOM . **I. L. R. 39 All. 574**

See HINDU LAW—STRIDHAN **I. L. R. 41 Bom. 618**

See HINDU LAW—WIDOW **I. L. R. 39 All. 1**

SUCCESSION ACT (X OF 1865).

——— **ss 7, 9, 10**—*Domicile—Domicile of origin—Domicile of choice—Domicile of origin acquired from parents at birth—Domicile of choice ac-*

accompanied by actual abandonment—Declarations of a party abandoning domicile, how far relevant—Domicile of origin reviving proper o v gore on abandonment of domicile of choice—Onus of proof One P P, a Native Christian, was born in Goa of parents domiciled in Goa, in Portuguese Territory In 1858, at the age of fourteen, he came out to Bombay and lived there uninterruptedly, with the exception of brief visits to Goa, till his death in June 1915, when he was seventy one years old In 1871, he married his first wife, the mother of the defendants Nos 1 to 3, and on her death in 1901 married the plaintiff in 1903 During the whole of his mature life in Bombay he carried on a flourishing coach building business, providing him self with a house near his factory From his conduct and declarations from time to time it appeared that he had settled in Bombay meaning it to be his fixed habitation It also appeared that some time after 1913, and shortly before his death he formed an intention of returning to Goa and end his days there On the 26th July 1909, he made a will in Bombay whereby he gave a legacy of Rs 7 a month to the plaintiff, if she chose to live separate from the defendant No 1, a legacy of Rs 500 to the defendant No 3, and the coach building factory to the defendant No 4, the minor son of defendant

SUCCESSION ACT (X OF 1865)—*contd.*

——— s. 7—*contd.*

No. 1. He appointed defendant No. 1, the sole executor and residuary legatee. The entire moveable property belonging to him in his own right was valued by the plaintiff for Rs. 71,000, and by the defendant No. 1 for Rs. 19,000. The plaintiff disputed the will of her husband and contended that the deceased had Portuguese domicile at the time of his marriage with her in 1903, as well as at his death, and that under the Portuguese law she was entitled to a moiety of the estate left by the deceased. The defendant No. 3 who supported the plaintiff contended that in 1871, when the deceased married his mother the deceased had a Portuguese domicile, and that he too became entitled to a share in the estate of the deceased under the Portuguese law. *Held,* (i) that at any time between 1865 when the deceased had attained majority and 1913, the deceased had acquired a domicile of choice in Bombay in substitution for the domicile of his origin in Goa; (ii) that in spite of the intention of the deceased to return to the domicile of his origin, the domicile of choice continued in law to exist at his death, as the intention was not accompanied by the actual abandonment of the domicile of choice; (iii) that the making of the will and all other matters governed by the Indian law of succession must be determined as though the deceased had all along, from the year 1865 to the time of his death, been a British subject domiciled in Bombay; (iv) that the claim put forward by the plaintiff or the defendant No. 3 was not maintainable as the devolution of the estate of the deceased was not governed by the law of Portugal. The domicile of origin is that which a person acquires at his birth from his parents and follows the domicile of his parents. It is not necessarily in itself local, that is to say, merely the place of birth. The domicile of origin once ascertained in law clings and adheres to the person until he chooses to divest himself of it by substituting a domicile of choice for the domicile of origin. The domicile of choice is acquired by a combination of fact with intention. The fact is residence and the intention is that the residence should be permanent. The domicile of choice can be discarded as easily as it can be acquired by a fact and an intention, namely, the fact of abandoning the residence accompanied by the intention that that abandonment shall be final, and that upon any such mere abandonment of one domicile of choice without the acquisition of another, the domicile of origin revives *proprio vigore* and without the need of any further act or intention on the part of the person. The law leans very strongly in favour of the retention of the domicile of origin. Where there are no declarations of intention either way, the Courts would be slow to infer from the mere fact of residence however protracted that residence may be, the intention requisite to complete the substitution of domicile of choice for that of origin. The onus being upon the person alleging that a man has acquired a domicile of choice, he must prove to the Court that that man had that intention. A man having acquired a domicile of choice may after many years decide to abandon his domicile of choice and again accept his domicile of origin. But if with that intention clear in his mind he should fail actually to abandon his domicile of choice and die before thus far giving effect to his intention the result would be that the domicile of choice would persist and the distribution of his estate would be governed by it. The law of domicile in the Courts of England from the case of *Bruce* v. *Bruce, 2 Bos. & P. 229,* footnote, to that of *Huntly* v. *Gaskell,* [*1906*] *A. C. 56,* considered. SANTOS *v.* PINTO (1916) . . **I. L. R. 41 Bom. 687**

——— **s. 50**—*Will of a marksman—Mark not affixed by the testator himself but by another, not a due execution—Absence of two attesting witnesses besides the person affixing the mark, not a due attestation.* Where with a view to execute a will the testator, who was a marksman, touched the pen and gave it to another who affixed to the will a mark and wrote against it the testator's name and added beneath it his own name as the person who affixed the mark, and the will did not contain attestations of two *other* persons besides that of the person so affixing the mark. *Held,* that the will was invalid as not complying with the provisions of s. 50 of the Indian Succession Act. As a *marked* will, it was invalid, as the mark was not affixed by the testator himself, as required by the section. Considered as a *signed* will as it might be, it was equally invalid as the testator's signature was put by another and there were not two *other* attestors besides the one so signing. RADHAKRISHNA *v.* SUBRAYA (1916) . **I. L R. 40 Mad. 550**

SUDRAS.

See YATI . . **I. L. R. 40 Mad. 846**

SUFFICIENT CAUSE.

See APPEAL . **L. R. 44 I. A. 218**

SUIT.

——— **dismissal of—**

See CIVIL PROCEDURE CODE (1908), O. V, R. 3: O. IX, R. 12.
I. L. R. 39 All. 476

——— **for account—**

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 116 . **I. L. R. 39 All. 355**

——— **for dissolution of partnership—**

See CIVIL PROCEDURE CODE (1908), O. XXII, R. 4.
I. L. R. 39 All. 551

——— **for joint possession—**

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 138, 144.
I. L. R. 39 All. 460

——— **for judicial separation—**

See CIVIL PROCEDURE CODE (1908), S. 83.
I. L. R. 39 All. 377

——— **for money had and received—**

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 29, 36, 120.
I. L. R. 39 All. 322

——— **for possession and mesne profits—**

See LIMITATION ACT, 1908, SCH. I, ART. 109 . . **I. L. R. 39 All. 200**

——— **for profits—**

See CIVIL PROCEDURE CODE (1908), XXVI, RR. 9, 16, 17, 18.
I. L. R. 39 All. 604

SUIT—*concld*

———— for redemption of mortgage—

See COURT FEE I L R 39 All 452

———— for refund of purchase money—

See CIVIL PROCEDURE CODE (1908) O XXI RR 92 93 I L R 39 All 114

———— place of—

See CIVIL PROCEDURE CODE (1908) s 20 I L R 39 All 368

———— to set aside a decree on the ground of fraud—

See CIVIL PROCEDURE CODE (1908) s 20 (c) I L R 39 All 607

———— valuation of—

See CIVIL PROCEDURE CODE s 115 I L R 39 All 723

SUITS VALUATION ACT (VII OF 1887)

———— s 8—

See ADMINISTRATION SUIT I L R 44 Calc 890

SURETY

See CIVIL PROCEDURE CODE (ACT V OF 1908) O XXXVIII R 5 SS 11, 14 I L R 41 Bom 402

See FITNESS OF SURETY GROUNDS OF I L R 44 Calc 737

———— for insolvent's debt, whether, "creditor"—

See PROVINCIAL INSOLVENCY ACT (III OF 1907) s 37 I L R 40 Mad 783

———— liability of—

See PRINCIPAL AND SURETY I L R 44 Calc 978

———— *Grounds of fitness—Pecuniary sufficiency—Inability of control—Dis*

v *Emperor 13 C W N 80 Jafar Ali Panjalia* v *Emperor I L R 37 Calc 446* and *Emperor* v *Asiraddi Mandal I L R 41 Calc 764* approved. *Ram Pershad* v *King Emperor 6 C W N 503 Adam Sheikh* v *Emperor I L R 35 Calc 400* and *Rayan Khan* v *Emperor I L R 43 Calc. 10 J* not followed ABDUL KARIM v EMPEROR (1916) I L R 44 Calc. 737

SYNDICATE AND SENATE

———— respective powers of—

See SPECIFIC RELIEF ACT (I OF 18) s 45 I L R 40 Mad. 125

T

TALABI BRAHMOTTAR

See GRANT I L R 44 Calc 585

TALAB I-ISHHAD

See MAHOMEDAN LAW—PRE EMPTION I L R 41 Bom 636

TALAB I-MOWASIBAT

See MAHOMEDAN LAW—PRE EMPTION I L R 41 Bom. 636

TALUKDAR

———— mortgage by—

See BROACH AND KAIRA INCUMBERED ESTATES ACT (XXI OF 1881) s 28 I L R 41 Bom 546

TEMPLE

———— right to perform festival in a—

See HINDU LAW—CUSTOM I L R 40 Mad 1108

———— rights of management of—

See PARTITION I L R 39 All 651

TEMPLE COMMITTEE

See CIVIL PROCEDURE CODE (ACT V OF 1908) s 92 I L R 40 Mad 212

———— vacancy in—

See RELIGIOUS ENDOWMENTS ACT (XX OF 1863) s 10 I L R 40 Mad 793

TENANCY

———— *Tenancy created by lease—Right of person not party to contract holding*

by the tenant for cultivating it by himself or by hired servants or by members of his family the character of the tenancy is not altered by the mere fact that the land was subsequently let out to tenants and although in such a case the land may as between the lessor and the lessee be taken to have been acquired for the purpose as stated in the *lease itself, it* is certainly open to a person who is no party to the contract to show that the real purpose for which the land was acquired by the lessee was other than what was stated in the lease RAJANI KANTHA MUKHERJEE v YUSUF ALI (1916) *21 C W N 188*

TENANCY-AT-WILL.

———— *Yearly rent reserved—Lease whether by registered instrument only—Transfer of Property Act (IV of 1882) s 107* Section 107 of the Transfer of Property Act does not lay down that a lease of immoveable property can be made only by a registered instrument but it can be made only by a registered instrument in three cases viz (i) a lease from year to year (ii) a lease for any term exceeding one year, and (iii) a lease reserving a yearly rent. The fact that the rent is reserved at so much a year does

500, ... 431 and *Venkatagiri Zamindar* v *Raghava,*

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TENANCY-AT-WILL—*concld.*

I. L. R. 9 Mad. 142, referred to. SARAT CHANDRA DUTT *v.* JADAB CHANDRA GOSWAMI (1916)

I. L. R. 44 Calc. 214

TENANT.

———— **liability of, to pay compensation for loss of crops—**

See ESTATES LAND ACT (MAD. ACT I OF 1908), ss. 4, 27, 73 AND 143.

I. L. R. 40 Mad. 640

———— **right of—**

See IRRIGATION CHANNEL

I. L. R. 40 Mad. 640

TENURE.

———— *whether permanent or temporary—Tenancy held by original grantee or his successor in interest for 70 years under four doul kabuliyats for terms—" Sarasari " whether applies to rent only or tenure itself—Fact or law, question of—Construction.* In a suit by the landlord, under s. 106, Bengal Tenancy Act, for correction of an entry that the tenancy of the defendants was a permanent tenure, four *doul kabuliyats* were relied upon to prove the contract of tenancy, bearing dates 1250, 1277, 1285 and 1295 B. S. All these were for terms of years, and they did not contain the words " from generation to generation." But the successive settlements were either with the original tenant or his heir, the oral evidence being to the effect that the dead man's heir was recognised as having a moral claim to succeed to his rights. All the *kabuliyats* bound the tenant to keep the trees intact and restrained him from making transfer of the land, the last three adding that he must not partition the land; and providing for the landlord's right of re-entry in the event of the tenant not entering into a fresh arrangement. They also spoke of the tenancy as *sarasari* (temporary). The lower Appellate Court upon these materials held that the tenure was considered by the landlord to be heritable, that it was permanent but not transferable and that the rent was liable to enhancement : *Held*, on second appeal, that the question whether the tenure was permanent or not was not merely one of fact. That at any rate it depended to a large extent on the construction of the *kabuliyats*, the question, for instance, whether the word " *sarasari* " referred to the variability of the rent or the nature of the tenancy being one of construction. That the tenure was neither permanent nor heritable. *Per* WALMSLEY, *J.*—The tenant who claims a hereditary right under a document which does not contain the words " from generation to generation" has a heavy onus to discharge. That the temporary character of the tenancy was not limited only to the amount of rent. That repeated renewals of an agreement do not change its character and regard should be had to the later rather than the earlier *kabuliyats*, and the fact that during a period of 70 years only four *kabuliyats* were passed and the settlement made again and again with the same man or his successor in interest did not alter the nature of the agreement. PRODYOT KUMAR TAGORE *v.* SARAT CHANDRA DAS (1917) . . . . . **21 C. W. N. 809**

TERMINATION OF SERVICE

See SCHOOL-MASTER

I. L. R. 44 Calc. 917

THEATRICAL PERFORMANCE.

———— *Keeping open a theatre after prescribed hour—Joint proprietors, liability of—Penalty for offence or on offender—Calcutta Municipal Act (Beng. III of 1899), ss. 559 (52), 561—Bye-laws 83 and 85—Validity of bye-law 85.* Bye-law 85 framed under s. 559 (52) of the Calcutta Municipal Act (Beng. III of 1899) is not *ultra vires* by reason of s. 561 thereof, and each of the joint proprietors of a theatre is liable to a fine to the extent of Rs. 20 for keeping it open after 1 A.M., in contravention of bye-law 83. *Amrita Lall Bose* v. *Corporation of Calcutta, 21 C. W. N. 1009*, overruled. *Reg.* v. *Showdar Ghenar, 7 Bom. H. C. R. 39*, distinguished. *Rex* v. *Clark, 2 Cowp. 610. Queen* v. *Littlechild, L. R. 6 Q. B. 293*, referred to. *Per* MOOKERJEE, *J.*—As a general principle of criminal law, all who participate in the commission of an offence are severally responsible, as though the offence had been committed by each of them acting alone ; consequently each must be separately punished. AMRITA LAL BOSE *v.* CORPORATION OF CALCUTTA (1917)

I. L. R. 44 Calc. 1025

THEFT.

See LURKING HOUSE-TRESPASS

I. L. R. 44 Calc. 358

———— *Dishonest intent—Bonâ fide claim of right to property, or mere pretence—Proper question for consideration by the Criminal Courts—Criminal trespass—Evidence of complainant's possession, illusory—Penal Code (Act XLV of 1860), ss. 379, 447.* The removal of property in the assertion of a *bonâ fide* claim of right, though unfounded in law and fact, does not constitute theft. But a mere colourable pretence to obtain or keep possession of property does not avail as a defence. Whether the claim is *bonâ fide* or not, must be determined upon all the circumstances of the case, and a Court ought not to convict unless it holds that the claim is a mere pretence. *Rex* v. *Hall, 3 C. & P. 409, Reg.* v. *Wade, 11 Cox. 549, Rex* v. *Jenner, 7 L. J. M. C. (O. S.) 79, Reg.* v. *Leppard, 4 F. & F. 51, Nassib Chowdhry* v. *Nannoo Chowdhry, 15 W. R. Cr. 47, Runnoo Singh* v. *Kali Churn Misser, 16 W. R. Cr. 18, Mahomed Jan* v. *Khadi Sheik, 16 W. R. Cr. 75, Khetter Nath Dut* v. *Indro Jalia, 16 W. R. Cr. 78, Empress* v. *Budh Singh, I. L. R. 2 All. 101, In re Madhab Hari, I. L. R. 15 Calc. 390n, Pandita* v. *Rahimulla Akundo, I. L. R. 27 Calc. 501, Emperor* v. *Sabalsang, 4 Bom. L. R. 936, Algarasawmi Tevan* v. *Emperor, I. L. R. 28 Mad. 304, Hari Bhuimali Emperor, 9 C. W. N. 974*, followed. *Held*, upon the facts, that even if the accused had failed to establish his title and possession to the land, it was a case of a *bonâ fide* dispute, and that the conviction of theft was bad. ARFAN ALI *v.* EMPEROR (1916)

I. L. R. 44 Calc. 66

TIME-BARRED DEBT.

See HINDU LAW—ALIENATION.

I. L. R. 41 Bom. 347

TITLE.

See CHAUKIDARI CHAKARAN LANDS.

I. L. R. 44 Calc. 841

See PUBLIC DRAIN.

I. L. R. 44 Calc. 689

———— **proof of—**

See VENDOR AND PURCHASER.

I. L. R. 41 Bom. 303

TRANSFER OF PROPERTY ACT (IV OF 1882) —*contd*

——— ss. 51, 54, 118—

See ESTOPPEL BY CONDUCT

I. L. R. 40 Mad. 1134

——— s. 52—*Lis Pendens—Attachment before judgment—Claim to attached property by third party, allowed—Suit by decree holder against claimant to establish his right to attach—Suit dismissed—Appeal by decree holder—Judgment debtor, not a party to suit or appeal—Sale in execution of another decree by another decree holder pending appeal—Decree on appeal—Subsequent sale in execution—Validity of prior sale* A decree holder had attached the property of his judgment debtor before decree in his suit, and, while he was seeking to establish his right to attach and sell such property as the property of his judgment debtor by suit against a successful claimant, another decree holder attached the same property and brought it to sale during the pendency of the appeal in the claim suit The judgment debtor was not made a party to the claim proceedings or the subsequent suit or appeal The property was again sold in execution of the decree of the former decree holder who purchased it and sued

sale *Per* WALLIS, *C J*—The doctrine of *lis pendens* was inapplicable on the ground that the judgment debtor was not a party to the claim proceedings or the subsequent suit and could not be considered to be represented in that suit by the plaintiff therein *Lala Mulji Thakar* v *Kashi Bai, I L R 10 Bom 400*, referred to Even if the judgment debtor was a party thereto, there is no *lis pendens* as the doctrine of *lis pendens* applies only to alienations which are inconsistent with the right which may be established by the decree in the suit here as the sale in execution proceeded on the very footing that the property belonged to the judgment debtor, the doctrine is inapplicable *Per* NAPIER, *J—The doctrine of lis pendens does not apply as* the judgment debtor was not actually or constructively a party to the claim suit *Phul Kumari v Ghanshyam Misra, I L R 35 Calc 202*, explained *Krishnappa Chetty v Abdul Khader Sahib, I L R 38 Mad 535, dissented from* PETHU AYYAR *v* SANKARANARAYANA PILLAI (1916) . . . **I. L. R. 40 Mad. 955**

——— s. 53—

See ATTACHMENT.

I. L. R. 44 Calc. 662

——— *Mortgage in fraud of creditors* The first defendant mortgaged two

first defendant prior to the mortgage In a suit by the plaintiff to enforce the mortgage security the lower Appellate Court made a decree for realisation of the mortgage money by sale of the first property alone although it found that at the date of the mortgage which was for an antecedent loan and an alleged cash payment which was not proved, the plaintiff was not aware of the decree

TRANSFER OF PROPERTY ACT (IV OF 1882) —*contd*

——— s. 53—*concld*

obtained by the second defendant nor of its impending execution against the first defendant, and that there was no evidence to show that there

that section which rendered the transaction only voidable at the option of the person defrauded entitled to question the mortgage only in so far as it affected the property acquired by him, and therefore the Court's order directing the sale of the first property was not open to exception That the Court in proceeding to grant relief by way of avoidance of the transaction would do so only on equitable consideration and would apply the principles of justice, equity and good conscience, and as it appeared that the second defendant acquired the but subject to the lien of the plaintiff, he should be granted relief only on condition that he satisfied the lien The plaintiff was therefore entitled to a decree for his dues also as against the second property in the hands of the second defendant KRISHNA KUMAR NANDY *v* JAI KRISHNA NANDY (1915) **21 C. W. N. 401**

——— s. 54—

See MORTGAGE . **I. L. R 44 Calc. 542**

1. ——— *Agreement for sale of immoveable property—Possession taken under the agreement—No registered conveyance—Suit by vendor to recover possession—Agreement for sale, whether a valid defence to the suit—Agreement capable of specific enforcement at the date of the suit—Specific Relief Act (I of 1877), s 3, Illustration (g) and ss 12 and 27—Indian Trusts Act (II of 1882), ss 41, 95* Where the plaintiff being the owner of certain immoveable property seeks to recover possession of that property and there are no facts operating to his prejudice, it is a valid defence to the suit that the plaintiff has agreed to sell the property to the defendant, the agreement being at the date of suit still capable of specific enforcement, but there being no registered conveyance passing the property to the defendant, who has taken possession under the agreement for sale and is willing to perform his part of it with the plaintiff BAPU APAJI *v* KASHINATH SADOBA (1917) . . . **I. L. R. 41 Bom. 438**

2. ——— *Indian Registration Act (XVI of 1908), ss 17, 50—Sale of land below Rs 100 in value by unregistered deed of sale and delivery of possession—Sale valid on proof of sale and delivery of possession—Secondary evidence of*

The plaintiffs remained in possession till 1911, when they were dispossessed by defendant No 2 In the suit to recover possession of the lands, the plaintiffs having lost the unregistered deed of sale adduced secondary evidence of its contents. The

TRANSFER OF PROPERTY ACT (IV OF 1882)
—contd

——— s 69—*concld*

debt, though the fine, if recovered, was directed to be paid to the complainant PICHU VADHIAR v THE SECRETARY OF STATE FOR INDIA (1916)
I L R 40 Mad 767

——— ss. 83, 84—

1. ——— *Deposit in Court—Title of mortgagee's legal representative in dispute in suit—Withdrawal by mortgagor before decision in suit—Cessation of interest* Where a mortgagor, who had deposited in Court under s 83 of the Transfer of Property Act the money due from him on the mortgage, withdrew the amount from Court before the title of the legal representatives of the mortgagee, which was then in dispute, was established in a suit *Held*, that the mortgagor was not entitled to exemption from interest on the mortgage amount from the date of the deposit under s 84 of the Transfer of Property Act *Krishnasami Chettiar* v *Ramasami Chettiar, I L R 35 Mad 44*, referred to THEVARAYA REDDY v VENKATACHALAM PANDITHAN (1916)
I. L R 40 Mad. 804

2. ——— *Mortgage—Redemption—Right of owner of share in property mortgaged to redeem the entire mortgage* The owner of a portion only of the equity of redemption is competent to maintain a suit for redemption of the entire mortgage even against the will of the mortgagee *Norender Narain Singh* v *Dwarka Lall Mundur, L R 5 I A 18, Huthasanan Nambudri* ...

... v BABU LAL (1917) . **I L R 39 All. 719**

——— s. 91—*Mortgage —Right to redeem—Attaching creditor* Certain property was mort ...

... on the 28th of September, 1902 In 1897, the mortgagees sued on their mortgage without impleading either *N K or L R* In execution of their decree the property was sold and purchased by defendant's father, who obtained possession on the 25th of April, 1900 *L R* brought suit for recovery of possession or, in the alternative, for redemption *Held*, that under s 91 (*f*) of the Transfer of Property Act, *N K* was entitled to redeem, and the plaintiff, as a person claiming *under him, is also entitled to redeem* LAKHPAT RAI v FAKHR UD DIN (1917)
I. L. R. 39 All. 536

——— ss. 106, 107—

See LANDLORD AND TENANT
I. L. R. 44 Calc 403

——— s. 107—

See TENANCY AT WILL.
I. L R. 44 Calc. 214

——— s. 108 (*j*)—*Lessor and lessee—Mortgage with possession by lessee—Mortgagee not liable to the lessor for rent—Privity of estate, meaning of* A mortgagee with possession from the lessee is not liable to the lessor for rent as there is neither privity of estate nor of contract between them *Per* WALLIS, *C J*—Privity of estate is a technical term of English Law and under that law, such privity arises only where the whole of the lessee's interest is assigned over and not where a subsidiary interest is carved out of the lessee's interest The Transfer of Property Act in enacting s 108 (*j*) *does not seem to have* introduced any departure *from the English Law* English and Indian cases reviewed THETHALAN v THE ERALPAD RAJAH, CALICUT (1917) . **I. L. R. 40 Mad. 1111**

——— s 123—

See GIFT . **I L. R. 40 Mad. 204**

TRANSFERABILITY.

See OCCUPANCY HOLDING
I. L R. 44 Calc 272, 720

TRAVELLING WITHOUT TICKET.

See RAILWAY PASSENGER.
I. L. R. 44 Calc. 279

TRESPASSER.

——— *Tenants settled by trespasser—Principle of Binad Lal Pakrashi's Case, if applies when tenant never got possession —Bona fides* The principle of the Full Bench case of *Benad Lal Pakrashi* v *Kalu Pramanick, I L R 20 Calc 708*, is an encroachment upon the ordinary ...

and is not to be extended In order to make the principle available, it is essential that the lessor ...

took a lease from the owner after his interest had been sold in execution of a decree, who never obtained juridical possession of the disputed property, and who had to be bound down by a Criminal Court to prevent him from interfering with the possession of the defendant KRISHNA NATH CHAKRAVARTI v MAHOMED WAFIZ (1915)
21 C. W. N. 93

TRIAL.

——— a new, demand for—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s 367
I. L. R. 40 Mad. 108

TRIAL BY JURY.

See JURY, TRIAL BY.

TRIBAL COMMUNITY, PUNJAB.

See CUSTOM . **I. L. R. 44 Calc. 749**

TRUST.

See MAHOMEDAN LAW—GIFT.
I. L. R. 41 Bom. 372

TRUSTEES.

——— line of, failure of—

See RELIGIOUS ENDOWMENT
I. L. R. 40 Mad. 612

TRUSTEES—*concld.*

———— **of charitable inams.**—

See CHARITABLE INAMS.

I. L. R. 40 Mad. 939

TRUSTEES AND TEMPLE COMMITTEES.

———— **respective rights of**—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 92 . **I. L. R. 40 Mad. 212**

TRUSTS ACT (II OF 1882).

———— **ss. 41, 95**—

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 54 . **I. L. R. 41 Bom. 438**

U

UBAYAKAR.

See HINDU LAW—CUSTOM.

I. L. R. 40 Mad. 1108

ULTRA VIRES RULE.

———— **rule 44**—

See SCHEDULED DISTRICTS ACT (XIV OF 1874), s. 7 . **I. L. R. 41 Bom. 657**

UNCHASTITY.

See HINDU LAW—MAINTENANCE.

I. L. R. 39 All. 234

UNDER-RAIYAT.

See OCCUPANCY HOLDING.

I. L. R. 44 Calc. 272

UNITED PROVINCES AND OUDH ACTS.

———— **1881—XII.**

See NORTH-WESTERN PROVINCES RENT ACT.

———— **1886—XXII.**

See OUDH ACT.

———— **1901—II.**

See AGRA TENANCY ACT.

———— **1901—III.**

See UNITED PROVINCES LAND REVENUE ACT.

———— **1910—IV.**

See UNITED PROVINCES EXCISE ACT.

———— **1916—II.**

See UNITED PROVINCES MUNICIPALITIES ACT.

UNITED PROVINCES EXCISE ACT (IV OF 1910).

———— **s. 40**—*Rules framed under Act—Transfer or sub-lease of licence—Agreement to share profits.* The plaintiff entered into an agreement with the defendant, who was a drug contractor, in consideration of a sum money advanced by him to the defendant, that he would be entitled to a share in the profits or responsible for the losses of the drug business to an extent therein set forth. *Held,* that such an agreement was neither a transfer nor a sub-lease of the drug contractor's licence and did not constitute a violation of r. 82 of the rules framed under the United

UNITED PROVINCES EXCISE ACT (IV OF 1910)—*concld.*

———— **s. 40**—*concld.*

Provinces Excise Act, 1910. SHIAM BIHARI LAL *v.* MALHI (1916) . . **I. L. R. 39 All, 107**

UNITED PROVINCES LAND REVENUE ACT (III OF 1901).

———— **s. 18**—*Suit for rent before Assistant Collector—Sanction to prosecute granted by him—Officer at the time of granting sanction placed in charge of another sub-division of the same district—Jurisdiction.* An Assistant Collector tried a suit under the Agra Tenancy Act, in the course of which a question as to the genuineness of a certain document tendered in evidence by the defendants arose. Subsequently to the decision of that suit the Assistant Collector was put in charge of the work of another sub-division in the same district. *Held,* that such a transfer of work did not deprive him of jurisdiction to grant sanction for a prosecution in respect of the forging of the document so tendered. DALIP SINGH *v.* NAWAL (1917) . . . **I. L. R. 39 All. 297**

———— **s. 34**—

See AGRA TENANCY ACT (II OF 1901), s. 158 . **I. L. R. 39 All. 689**

———— **s. 36**—*Agra Tenancy Act (II. of 1901), s. 41—Ex-proprietary tenant—Enhancement of rent.* The tenant of an ex-proprietary holding, whose rent had been fixed by the Collector under s. 36 of the United Provinces Land Revenue Act, entered into an agreement with the zamindar to pay an enhanced rent. The agreement was effected by means of a registered instrument, and the enhanced rent was not in excess of the beneficial rate mentioned in s. 10 of the Act, but it was made within the period of ten years from the fixation of rent by the Collector. *Held,* that such agreement was not open to any legal objection. BHAIRON PRASAD *v.* SOMWARPURI (1917) **I. L. R. 39 All. 318**

———— **s. 118**—*Partition—Co-sharers—Effect of order allotting to one co-sharer land upon which are standing buildings belonging to another co-sharer.* Where a partition has been effected under the provisions of the United Provinces Land Revenue Act, 1901, and the site of the house of one co-sharer has been allotted to the share of another co-sharer, the presumption is that the owner of the house is to retain possession of the house. The mere fact that ground rent has not been assessed cannot deprive the owner of the house of his right to it. *Iswar Prasad* v. *Jagannath Singh, All. Weekly Notes, 1906. 194,* followed. *Nandan Pat Tewari* v. *Radha Kishun Kalwar, 5 Indian Cases 664,* distinguished. SARUP LAL *v.* LALA (1917) **I. L. R. 39 All. 707**

———— **ss. 203 to 207**—*Agra Tenancy Act (II of 1901), s. 95—Arbitration—Decision of Revenue Court based on award—Dispute between rival tenants as to possession of land—Suit for possession—Jurisdiction—Civil and Revenue Courts. Held,* that s. 207 of the United Provinces Land Revenue Act, 1901, does not bar a separate suit on title, independently of the decision of the Revenue Court based on the award, to recover possession of property which has been the subject of arbitration proceedings under ss. 203 to 206 of the Act. *Girdhari Chaube* v. *Ram Bharan Misir, 14 All. L. J. 85,* approved and followed.

UNITED PROVINCES LAND REVENUE ACT (III OF 1901)—*concld.*

——— s. 203—*concld.*

Held, further, that a suit between the rival tenants adjoining holdings to determine the question whether a certain parcel of land appertains to the holding of the one or of the other is cognizable by the civil court. *Bhup Ram* v. *Ram Lal, I. L. R. 33 All. 795*, and *Jagannath* v *Ajudhia Singh, I. L. R. 35 All. 14*, referred to. TAPSI SINGH *v.* HARDEO SINGH (1917)
I. L. R. 39 All. 711

——— s. 233 (k)—*Partition—Suit to recover property which had been the subject of a partition.* Certain co sharers in a village applied for partition of their shares under s 107 of the United Provinces Land Revenue Act, 1901 Notice was issued to all the recorded co sharers, as required by s. 10 of the Act, and thereupon an application was made by other co sharers, under cl (2) of the section, praying for partition of their shares. In that application the applicants set forth the extent of the shares which they prayed should be formed into one lot, or *qura.* Subsequently a proceeding was drawn up under s 114 of the Act, declaring the basis upon which partition was to be effected. Some time after the partition was completed certain of the parties to the partition proceedings instituted a suit in a civil court to recover possession of shares other than those specified in the application aforesaid, upon which the partition had been based. *Held* by BANERJI and TUDBALL, J J. (RICHARDS, *C J., dissentiente*), that the suit was barred by s. 233 (*k*) of the Act. *Muhammad Sadiq* v *Laute Ram, I L. R 23 All. 291*, referred to. *Shambhu Singh* v *Daljit Singh, I. L. R 38 All 243*, distinguished. BIJAI MISIR *v.* KALI PRASAD MISIR (1917)
I. L. R. 39 All. 469

——— s. 234—

See CONTRACT ACT (IX OF 1872), s. 23.
I. L. R. 39 All. 51, 58

UNITED PROVINCES MUNICIPALITIES ACT (II OF 1916).

——— ss. 185, 186—*Erection of building without sanction of Municipal Board—Prosecution —Notice for demolition of building not necessary before prosecution* Where it is found that a building for which the sanction of a Municipal Board is required has been erected either without such sanction or in contravention thereof, it is not necessary for the board to direct the demolition of the building before it can prosecute the person who has erected it. EMPEROR *v.* HASHIM ALI (1917) . . **I. L. R. 39 All. 482**

——— ss. 209, 210—"*Erect a structure*"—*Movable planks placed across a public drain in front of a shop. Held*, that the placing, without the permission of the Municipal Board, of movable planks over a municipal drain outside a shop, the planks being put out in the morning when the shop was opened and removed at night, did not amount to an offence under the United Provinces Municipalities Act, 1916. The expressions [illegible] that it refers [illegible] ture. *Kamta* [illegible] *lahabad, I. L.* [illegible] OR *v.* MUHAM- [illegible] . . **I. L. R. 39 All. 386**

UNITED PROVINCES MUNICIPALITIES ACT (II OF 1916)—*concld.*

——— s. 274—"*Occupier.*" *Held*, that a person of whom no more could be said that he was held responsible for the upkeep and cleanliness of a temple by the former adhikari was not an 'occupier' of the temple and could not be convicted as such under s. 274 of the United Provinces Municipalities Act, 1916, for throwing rubbish on to the street. EMPEROR *v.* PIARI LAL (1917) . . **I. L. R. 39 All. 309**

UNIVERSITY OF MADRAS.

See SPECIFIC RELIEF ACT (I OF 1877), s 45 . . **I. L. R. 40 Mad. 125**

UNPROFESSIONAL CONDUCT.

See PROFESSIONAL MISCONDUCT.

USAGE.

See USAGE OF THE PROFESSION
I. L. R. 44 Calc. 741

USAGE OF THE PROFESSION.

See BARRISTER **I. L. R. 44 Calc. 741**

USUFRUCTUARY MORTGAGE.

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 109 . **I. L. R. 39 All. 200**

See SALE FOR ARREARS OF REVENUE.
I. L. R. 44 Calc. 573

——— construction of—

See MORTGAGE . **I. L. R. 44 Calc. 388**

V

VAKIL.

See PROFESSIONAL MISCONDUCT.
I. L. R. 40 Mad. 69

——— *Vakil, right of evidence of, at hearing of application against order of Presidency Small Cause Court refusing sanction to prosecute, before Division Bench appointed for the purpose.* An application for sanction to prosecute the plaintiffs was rejected by the Judge of the Court of Small Causes at Calcutta who tried the suit. Against this, the defendants applied to the Judge of the High Court sitting on the Original Side, who remanded the matter to the trial court. On an appeal under the Letters Patent the order of remand was set aside and the application was remitted to a divisional bench appointed for the purpose, for disposal. At the hearing, the opposite party was represented by a vakil. *Held, Per* TEUNON, J, (CHAUDHURI, J., *differing*), that the vakil had the right of audience. *Per* TEUNON, *J.*—That the Presidency Small Cause Court is an inferior or subordinate court and in dealing with its judgments or orders the High Court is a superior court exercising not original but appellate or revisional jurisdiction. From this and the provisions of s 4 of the Legal Practitioners Act it follows that the vakil was entitled to be heard. *Per* CHAUDHURI, *J.*—That the power of superintendence, direction and control which was possessed by the Supreme Court over the Presidency Small Cause Court appertains to the Original Side of the High Court and all such powers when exercised by the Original Side

VAKIL—*concld.*

are exercised in its Original Jurisdiction within the meaning of s. 4 of the Legal Practitioners Act. BUDHU LAL *v.* CHATTU GOPE (1917)
21 C. W. N. 654

VALIDITY OF WAKF.

See MAHOMEDAN LAW—WAKF.
L. R. 44 I. A 21

VALUATION OF SUIT.

See ADMINISTRATION SUIT.
I. L. R. 44 Calc. 890

See CIVIL PROCEDURE CODE, s. 115.
I. L. R. 39 All. 723

VALUE.

See VALUE OF PROPERTY.

VALUE OF PROPERTY.

See APPEAL TO PRIVY COUNCIL.
I. L. R. 44 Calc. 119

VATAN.

See HEREDITARY OFFICES ACT (BOM. III OF 1874), ss. 4, 53.
I. L. R. 41 Bom. 677

See HEREDITARY OFFICES ACT (BOM. III OF 1874 AS AMENDED BY BOM. ACT III OF 1910), ss. 25, 36, 63, 64.
I. L. R. 41 Bom. 23

VEHICLE.

See BOMBAY DISTRICT POLICE ACT (BOM. IV OF 1890), s. 61, CL. (*b*).
I. L. R. 41 Bom. 464

VENDOR AND PURCHASER.

See SALE OF IMMOVEABLE PROPERTY.
I. L. R. 39 All. 166

———— **rights of—**

See MORTGAGE . **I. L. R. 44 Calc. 542**

———— *Title, proof of—Contract to give a marketable title free from all reasonable doubts—Evidence of discharge of mortgage—Recitals in release—Registration Act* (*III of 1877*). The question in this appeal was whether a vendor had made out "a marketable title free from all reasonable doubts," which he had contracted to do by a written agreement, dated 18th October 1913, to sell certain land in Bombay. There had been a mortgage effected on the property, on 26th April 1892, in favour of two joint mortgagees by an agreement of charge duly registered under the Registration Act (III of 1877) and the deposit of the title-deeds of the property with the mortgagees. To deduce a good title it became necessary to prove that the mortgage had been discharged. As proof of that fact the vendor produced a certified copy of a release, dated 30th September 1902, which had been executed by only one of the joint mortgagees, but which recited the death of the other mortgagee, the fact that his co-mortgagee was his sole heir and the redemption of the property from the equitable charge created by the agreement of 26th April 1892. One of the title-deeds of the property was not produced by the vendor. *Held* (reversing the decisions of the Courts in India), that the recitals in the release were not evidence against the joint mortgagee, and that the title contracted for had not been deduced. SHRINIVASDAS BAVRI *v.* MEHERBAI (1916) . . **I. L. R. 41 Bom. 300**

VILLAGE CHAUKIDARI ACT (BENG. VI OF 1870).

———— **s. 50—**

See CHAUKIDARI CHAKARAN LANDS.
I. L. R. 44 Calc. 841

———— **s. 60**—*Enquiry, nature of—Notice, persons entitled to—Notice, absence of, effect of—Commissioner's report if final and conclusive—Reg. VII of 1822, s. 21. Held*, that s. 60 of the Chaukidari Chakaran Act (VI of 1870, B. C.) lays down that in *chaukidari chakaran* enquiries the procedure shall be in accordance with Reg. VII of 1822 and the absence of notice would render the proceedings of the Commissioner of no effect against a person who was entitled to notice and the Civil Court could interfere, although but for such defect the order of the Commissioner would be final and conclusive. SARAT CH. RAY *v.* SECRETARY OF STATE FOR INDIA (1916)
21 C. W. N. 238

VYAVAHARA MAYUKHA.

See HINDU LAW—STRIDHAN.
I. L. R. 41 Bom. 618

W

WAIVER.

———— *Jurisdiction—Leave to sue—Letters Patent, 1865, cl. 12—Estoppel.* Where the plaintiff in his plaint alleges that portion of the cause of action arises outside the local limits of the Ordinary Original Civil Jurisdiction of this Court and fails to take leave under cl. 12 of the Letters Patent, the defendant may by appearing and pleading waive the objection to the jurisdiction. Where, however, the plaintiff alleges that the whole cause of action arises within the local limits of the Ordinary Original Civil Jurisdiction thus setting up a complete jurisdiction in the Court, and the defendant is called upon to plead to this and does plead, but it turns out at the trial that the Court had not complete jurisdiction as portion of the cause of action arose within and portion outside the local limits of the Ordinary Original Civil Jurisdiction, the defendant cannot be held bound on the doctrine of estoppel on the ground that he waived the objection of want of jurisdiction. *King* v. *Secretary of State for India, I. L. R. 35 Calc. 394*, and *Suckan* v. *Weiner, 17 T. L. R. 494*, referred to. SHAMA KANTA CHATTERJI AND COMPANY *v.* KUSUM KUMARI (1916)
I. L. R. 44 Calc. 10

WAJIB-UL-ARZ.

See PRE-EMPTION.
I. L. R. 39 All. 127, 544

———— *Value of, as evidence, as record of traditions.* A Wajib-ul-Arz in a village administration paper, prepared by a village official, in which are recorded the statements of persons possessing interests in the village relative to existing rights and customs. As such they are of considerable value in the determination of such rights and customs. But statements which merely narrate traditions and purport to give the history of devolution in certain families not even of the narrators, stand in no better position than any other tradition. MURTAZA HUSAIN KHAN *v.* MAHOMED YASIN ALI KHAN (1916) . . . **21 C. W. N. 410**

WAKF.

See Mahomedan Law—Wakf

———— validity of—

See Res Judicata.
I. L. R. 44 Calc. 698

See Mahomedan Law—Wakf.

WARRANT.

See Arrest, Warrant to

WASTE.

———— ownership of—

See Mirasi Village
I. L. R. 40 Mad. 410

WASTE LANDS.

———— ownership of kudevaram—

See Limitation Act (Act XV of 1877), s. 22 . I. L. R. 40 Mad. 722

WASTE LANDS ACT (XXIII OF 1863).

———— s. 18—*Procedure under that Act—Sale, by Government, of lands under the Act—Error in advertisement of sale—Absence of proof of proclamation ousting jurisdiction of ordinary Courts and*

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to the contrary they will be presumed to be accurate This appeal arose out of a suit by the Maharajah of Tipperah to recover possession of certain plots of land in Sylhet from the Government and from certain Tea Companies who in virtue of leases granted by the Government were in possession of the lands in suit There were concurrent findings of fact by the Courts in India that the lands in question were *de facto* in the possession of the plaintiff and his predecessors since the beginning of the 19th century, and that the dispossession had taken place within 12 years before suit so as to exclude the plea of limitation and the Judicial Committee substantially upheld the decision of the High Court in favour of the plaintiff One plot, however, had been sold by the Government as waste land and the sale was not in any way stopped or interfered with by the Rajah, and more than three years had elapsed from the date of delivery to the purchaser, which was the period provided by s 18 of the Waste Lands Act (XXIII of 1863) after which no "claim to any land, or to compensation or damages in respect of any land sold as waste land could be received", and it was contended that the suit was barred by s 18 as to that plot *Held*, that the Act was one which

necessity of proper intimation being given by Government as to the proposed sale, and where they had given a misleading notice and had advertised a sale of lands in one district when they were situated in another district, the whole of the sale proceedings failed for want of a proper basis. When a claim was allowed under the Act procedure was provided for the issue of a pro-

WASTE LANDS ACT (XXIII OF 1863)—*concld.*

———— s. 18—*concld.*

clamation which ousted the jurisdiction of the ordinary Courts and constituted a Special Court, and no proof had in this case been given that

India *v* Birendra Kishore Manikya (1916)
I. L. R. 44 Calc. 328

WATER.

———— flowing, right to—

See Irrigation Cess Act (Mad. Act VII of 1865), s 1 and proviso, ss 1 and 2 . . I. L. R. 40 Mad. 886

WATER RIGHTS.

See Madras Irrigation Cess.
L. R. 44 I. A. 166

WEIGHTS AND MEASURES.

———— bye-law for—

See Bombay Municipal Act (Bom Act III of 1888), ss 418, 461, cl. (o)
I. L. R. 41 Bom. 580

WET RATE.

———— liability to pay—

See Estates Land Act (Mad Act I of 1908), ss 4, 27, 73 and 143
I. L. R. 40 Mad. 683

WIDOW.

———— alienation by—

See Hindu Law—Widow
I. L. R. 41 Bom. 93

———— minor, adoption by—

See Hindu Law—Adoption
I. L. R. 40 Mad. 925

WIDOW'S ESTATE.

———— alienation of, by Court of Wards—

See Hindu Law—Adoption
I. L. R. 40 Mad. 846

WIFE.

See Hindu Law—Maintenance.
I. L. R. 39 All. 234

WIFE'S COSTS.

See Divorce . I. L. R 44 Calc. 35

WILL.

See Hindu Law—Will.

See Construction of document
I. L. R. 39 All. 311

See Cutchi Memons
I. L. R. 41 Bom. 181

See Estoppel . I. L. R. 44 Calc. 145

See Guardians and Wards Act (VIII of 1890), ss 38 and 7.
I. L. R. 40 Mad. 672

See Mahomedan Law—Will.

———— bequest

See Hindu

VAKIL—*concld.*

are exercised in its Original Jurisdiction within the meaning of s. 4 of the Legal Practitioners Act. BUDHU LAL *v.* CHATTU GOPE (1917)
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VALIDITY OF WAKF.

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VENDOR AND PURCHASER.

See SALE OF IMMOVEABLE PROPERTY.
I. L. R. 39 All. 166

——— **rights of—**

See MORTGAGE . **I. L. R. 44 Calc. 542**

——— *Title, proof of—Contract to give a marketable title free from all reasonable doubts—Evidence of discharge of mortgage—Recitals in release—Registration Act (III of 1877).* The question in this appeal was whether a vendor had made out " a marketable title free from all reasonable doubts," which he had contracted to do by a written agreement, dated 18th October 1913, to sell certain land in Bombay. There had been a mortgage effected on the property, on 26th April 1892, in favour of two joint mortgagees by an agreement of charge duly registered under the Registration Act (III of 1877) and the deposit of the title-deeds of the property with the mortgagees. To deduce a good title it became neces-sar... prove ... mortgage had been dis-ch... fact the ... pro-du... lease, ...th
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VILLAGE CHAUKIDARI ACT (BENG. VI OF 1870).

——— **s. 50—**

See CHAUKIDARI CHAKARAN LANDS.
I. L. R. 44 Calc. 841

——— **s. 60**—*Enquiry, nature of—Notice, persons entitled to—Notice, absence of, effect of—Commissioner's report if final and conclusive—Reg. VII of 1822, s. 21. Held,* that s. 60 of the Chaukidari Chakaran Act (VI of 1870, B. C.) lays down that in *chaukidari chakaran* enquiries the procedure shall be in accordance with Reg. VII of 1822 and the absence of notice would render the proceedings of the Commissioner of no effect against a person who was entitled to notice and the Civil Court could interfere, although but for such defect the order of the Commissioner would be final and conclusive. SARAT CH. RAY *v.* SECRETARY OF STATE FOR INDIA (1916)
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See HINDU LAW—STRIDHAN.
I. L. R. 41 Bom. 618

W

WAIVER.

——— *Jurisdiction—Leave to sue—Letters Patent, 1865, cl. 12—Estoppel.* Where the plaintiff in his plaint alleges that portion of the cause of action arises outside the local limits of the Ordinary Original Civil Jurisdiction of this Court and fails to take leave under cl. 12 of the Letters Patent, the defendant may by appearing and pleading waive the objection to the jurisdiction. Where, however, the plaintiff alleges that the whole cause of action arises within the local limits of the Ordinary Original Civil Jurisdiction thus setting up a complete jurisdiction in the Court, and the defendant is called upon to plead to this and does plead, but it turns out at the trial that the Court had not complete jurisdiction as portion of the cause of action arose within and portion outside the local limits of the Ordinary Original Civil Jurisdiction, the defendant cannot be held bound on the doctrine of estoppel on the ground that he waived the objection of want of jurisdiction. *King* v. *Secretary of State for India, I. L. R. 35 Calc. 394,* and *Suckan* v. *Weiner, 17 T. L. R. 494,* referred to. SHAMA KANTA CHATTERJI AND COMPANY *v.* KUSUM KUMARI (1916)
I. L. R. 44 Calc. 10

WAJIB-UL-ARZ.

See PRE-EMPTION.
I. L. R. 39 All. 127, 544

——— *Value of, as evidence, as record of traditions.* A Wajib-ul-Arz in a village administration paper, prepared by a village official, in which are recorded the state-...s of persons possessing interests in the village ...e to existing rights and customs. As such are of considerable value in the determina-... such rights and customs. But statements ...erely narrate traditions and purport to ...history of devolution in certain families ... the narrators, stand in no better ... any other tradition. MURTAZA ... *v.* MAHOMED YASIN ALI KHAN
21 C. W. N. 410

WASTE LANDS ACT (XXIII OF 1863).

——— s. 18—*Procedure under that Act—Sale, by Government, of lands under the Act—Error in advertisement of sale—Absence of proof of proclamation ousting jurisdiction of ordinary Courts and constituting a Special Court—Three years limit for claims only applicable to proceedings before Special Court—Act applied to other lands than those only held by Government* Great weight had always been given by the Judicial Committee to the accuracy of survey maps they were not conclusive, but in the absence of evidence to the contrary they will be presumed to be accurate This appeal arose out of a suit by the Maharajah of Tipperah to recover possession of certain plots of land in Sylhet from the Government and from certain Tea Companies who in virtue of leases granted by the Government were in possession of the lands in suit There were concurrent findings of fact by the Courts in India that the lands in question were *de facto* in the possession of the plaintiff and his predecessors since the beginning of the 19th century, and that the dispossession had taken place within 12 years before suit so as to exclude the plea of limitation and the Judicial Committee substantially upheld the decision of the High Court in favour of the plaintiff One plot, however, had been sold by the Government as waste land and the sale was not in any way stopped or interfered with by the Rajah, and more than three years had elapsed from the date of delivery to the purchaser which was the period provided by s 18 of the Waste Lands Act (XXIII of 1863) after which no "claim to any land, or to compensation or damages in respect of any land sold as waste land could be received", and it was contended that the suit was barred by s. 18 as to that plot *Held*, that the Act was one which was drastic in its character and made great invasion on private rights The defendant who pleaded it must therefore bring the matter strictly within its provisions which clearly pointed to the necessity of proper intimation being given by Government as to the proposed sale, and where they had given a misleading notice and had advertised a sale of lands in one district when they were situated in another district, the whole of the sale proceedings failed for want of a proper basis. When a claim was allowed under the Act procedure was provided for the issue of a proclamation which ousted the jurisdiction of the ordinary Courts and constituted a Special Court, and no proof had in this case been given that any proclamation was issued The provision as to three years in s 18 was clearly applicable to the proceedings before the Special Court and that Court alone The procedure under the Waste Lands Act is not applicable only to lands belonging to the Government Secretary of State for India *v* Birendra Kishore Manikya (1916)

I. L. R. 44 Calc. 328

WILL—*contd.*

——— **execution of—**

See SUCCESSION ACT (I OF 1865), s. 50.
I. L. R. 40 Mad. 550

——— **nomination by—**

See MUTT . **I. L. R. 40 Mad. 177**

1. ———*Construction—Bequest by Hindu testator to widow, daughter, and daughter's daughter—Succession Act (X of 1865), s. 111.* Where a testator intended that his wife, daughter and daughter's daughter should each have an absolute interest in the property, and so long as anybody descended from himself was in existence his brother's son or the latter's descendants should have no interest in the property and where the provisions of his will ran thus—" If my wife die before, my daughter Gangamoni Debya shall get the property, etc." : *Held,* that under the provisions of s. 111 of the Succession Act the daughter takes only a life interest. *Lallu* v. *Jagmohan, I. L. R. 22 Bom. 409, Mahendra Lal* v. *Rakhal Das, 17 C. L. J. 630, Tripurari Pal* v. *Jagat Tarini Dasi, I. L. R. 40 Calc. 274, Sures Chandra Palit* v. *Lalit Mohan Dutta Chowdhuri, 20 C. W. N. 463,* referred to. JAGAT BIJOY BHATTACHARJEE *v.* TOMIJUDDI HOWLADAR (1916)
I. L. R. 44 Calc. 181

2. ———*Gift of life-estate with power of appointment—On failure to appoint estate to vest in legatee's heirs, executors and administrators—Construction—Absolute gift—Res judicata.* Testator bequeathed the income of a house to his two sons G. B. and B. B. for life, the moiety of the corpus to go to such person as each of his two sons shall by will or deed appoint and, in default of appointment, to their heirs, executors and administrators. *Held,* that the bequest conveyed an absolute estate in a moiety to each of the sons. G. B. was declared insolvent in Rangoon and in a suit filed before the Chief Court by the Official Assignee as Assignee of G. B.'s estate for the determination of the effect of the insolvency of G. B. on the bequest to him and his power of appointment, a consent decree was passed declaring that the Official Assignee was only entitled to a half share in the rents of the house during G. B.'s lifetime, without prejudice to the rights of his appointees or his heirs, executors and administrators. Subsequently G. B.'s adjudication was annulled. *Held,* that the consent decree did not operate as *res judicata* to prevent the High Court construing the bequest. BALTHAZAR *v.* BALTHAZAR (1917) **21 C. W. N. 992**

3. ———*Legatees long in possession in terms of will—Probate if should be refused on the ground that there is no estate to be administered.* Where a will has been propounded and proved, the Probate Court should grant probate even though it should appear that there were no debts due to or by the testator and the legatees have been in possession in accordance with the directions of the will for a long time, it being absolutely necessary for the legatees to establish their title by proving the will. The Probate Court cannot go into the question whether the legatees have acquired independent title by adverse possession. ADWAIT CHARAN MONDAL *v.* KRISHNADHONE SIRKAR (1917)
21 C. W. N. 1129

4. ———*Construction of will—Absolute words and limiting words occurring in one*

WILL—*concld.*

and the same sentence—Intention of the testator. A testator made the following provision in his will: " I appoint by this testament my brother Joaquim Serpes as my only and universal heir of all the immoveable property which I possess, and which may hereafter in any manner belong to me, with the strict obligation to him not to sell, exchange, or hypothecate it, but only to enjoy the usufruct thereof, and at his death to pass over the same to his male children preserving the same as a patrimony of the house." The question being raised whether upon a proper construction of the will Joaquim was merely a life tenant or whether he took absolutely. *Held,* that Joaquim was a mere life-tenant. ROSE D'SOUZA *v.* JOSEPH (1916)
I. L. R. 41 Bom. 70

WINDING UP.

See COMPANIES ACT (VII OF 1913), s. 162.
I. L. R. 39 All. 334

WIRE-FENCE.

See BOMBAY DISTRICT MUNICIPALITIES ACT (BOM. III OF 1901), s. 3, CL. (7).
I. L. R. 41 Bom. 563

WITHDRAWAL OF SUIT.

See JURISDICTION OF HIGH COURT.
I. L. R. 44 Calc. 454

WOMEN.

See PLEADER . **I. L. R. 44 Calc. 290**

WORDS AND PHRASES.

——— **"affected"—**

See LAND ACQUISITION.
I. L. R. 44 Calc. 219

——— **"agriculturist"—**

See CIVIL PROCEDURE CODE, 1908, s. 60 (c) . . **I. L. R. 41 Bom. 475**

——— **"building"—**

See BOMBAY DISTRICT MUNICIPALITIES ACT (BOM. ACT III OF 1901), s. 3, CL. (7). **I. L. R. 41 Bom. 563**

——— **"Court"—**

See PROFESSIONAL MISCONDUCT.
I. L. R. 44 Calc. 639

——— **"credible information"—**

See HABEAS CORPUS.
I. L. R. 44 Calc. 76

——— **"debt"—**

See CONTRACT ACT (IX OF 1872), s. 25
I. L. R. 40 Mad. 31

——— **"decree"—**

See CIVIL PROCEDURE CODE (1908), s. 2.
I. L. R. 39 All. 393

——— **"doubt"**

See JURISDICTION OF HIGH COURT.
I. L. R. 44 Calc. 595

——— **"engagements with Government"—**

See MADRAS IRRIGATION CESS.
L. R. 44 I. A. 166

——— **"family"—**

See HEREDITARY OFFICES ACT (BOM. III OF 1874), ss. 4, 53.
I. L. R. 41 Bom. 677

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